

PUBLIC MATTER

FILED

v6

JUL 16 2015

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 14-O-01867-LMA (14-O-04241)
)	
DOUGLAS JAMES CRAWFORD,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 202274,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Douglas James Crawford is charged with a total of eight counts of professional misconduct in connection with or related to a petition respondent filed in the superior court to compel third parties to recognize his authority as the attorney-in-fact for his mother. Respondent's default was entered in this disciplinary proceeding when he failed to appear on the second day of trial. 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 appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to appear at trial and if the attorney fails to have the default set aside or

///

///

¹ Unless otherwise indicated, all further references to rules are to the Rules of Procedure of the State Bar of California.



vacated within 45 days, then the State Bar will file a petition requesting that the State Bar Court recommend the attorney's disbarment.²

In the instant case, the court concludes that all of 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 the practice of law in California on July 12, 1999, and has been a member of the State Bar of California since that time.

Procedural Requirements Have Been Satisfied

On October 14, 2014, the State Bar filed and properly served a notice of disciplinary charges (NDC) on respondent at his membership-records address by certified mail, return receipt requested. On October 20, 2014, the State Bar filed and properly served a first amended NDC on respondent at his membership-records address by certified mail, return receipt requested. (Rule 5.44 [the State Bar may amend the NDC once without court approval if it does so before the respondent files a response to the original NDC].) Respondent filed a response to the first amended NDC on October 29, 2014. Respondent represented himself.

With court approval, on December 19, 2014, the State Bar filed and properly served a second amended NDC on respondent at his membership-records address by certified mail, return receipt requested. Under the court's order approving the State Bar's request to file a second amended NDC, respondent was not required to file a response to the second amended NDC. Instead, respondent's October 29, 2014, response to the first amended NDC was deemed to be his response to the second amended NDC.

² If the court determines that any due process requirements is 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).)

Each of the three NDC's in this proceeding (i.e., the NDC, the first amended NDC, and the second amended NDC) clearly notified respondent (1) that, if he failed to appear at the State Bar Court trial in this matter, his default would be entered and (2) that, if he thereafter failed to timely move to set aside his default, the State Bar Court would recommend that he be disbarred. (Rule 5.41(B)(5).)

On January 5, 2015, the court filed an order setting the trial in this matter for February 10 through 13, 2015, and properly served that order on respondent by first-class mail, postage prepaid, at the address that respondent listed as his on the first page of his October 29, 2014, response to the first amended NDC. That address is also respondent's membership-records address. (Rule 5.81(A)(2)(b)&(c).)

Respondent appeared at trial on February 10, 2015. However, after the State Bar made its opening statements, respondent walked out of the courtroom and did not return. Moreover, respondent failed to appear at trial when it resumed the following morning (i.e., the morning of February 11, 2015). Accordingly, on February 11, 2015, the court filed an order entering respondent's default and properly served that order on respondent at his membership-records address by certified mail, return receipt requested. (Rule 5.81(B); see also rule 5.25(B).)

The Court's February 11, 2015, order entering default clearly notified respondent that, if he did not timely move to set aside his default, the court would recommend that he be disbarred.

In that February 11, 2015, order, the court also ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California under Business and Professions Code section 6007, subdivision (e),³ effective three days after service of the order. Since that time, respondent has continuously been involuntarily enrolled inactive.

///

³ Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

Respondent did not seek to have his default set aside (or vacated). (Rule 5.83(C)(2) [attorney has 45 days after order entering default is served to file motion to set aside default].) Thus, on April 3, 2015, the State Bar filed and properly served on respondent a petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) the only contact the State Bar had with respondent after the entry of his default, was that respondent served on the State Bar copies of four separate petitions for interlocutory review that respondent filed in the review department;⁴ (2) respondent has one non-public matter pending against him; (3) even though respondent does not have a prior record of discipline, he has another disciplinary proceeding pending in the review department; and (4) the Client Security Fund has not paid out any claims 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 April 29, 2015.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations (not the charges) in the second amended NDC were 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 on four of the eight counts of misconduct charged in the second amended NDC 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-O-01867

Count One charges that respondent willfully violated section 6068, subdivision (c), which provides that an attorney has a duty "[t]o counsel or maintain those actions, proceedings, or

⁴ On March 10, 2015, the review department filed a single, one-page order summarily denying each of respondent's four petitions for interlocutory review because no abuse of discretion or error of law was shown.

defenses only as appear to him or her legal or just, except [in] the defense of a person charged with a public offense.” Specifically, count one charges that respondent violated his duty to maintain only those actions that appear to him to be legal or just by continuing to prosecute a petition that he filed in the superior court to compel third parties to recognize his authority as an attorney-in-fact for his mother for more than two months after the petition was allegedly mooted by the death of respondent’s mother and the resulting termination of respondent’s power of attorney. Count one is DISMISSED with prejudice because the factual allegations deemed admitted by the entry of respondent’s default do not clearly establish that the superior court petition was mooted by the death of respondent’s mother and the resulting termination of respondent’s power of attorney.

Probate Code section 4543 authorizes the superior court to dismiss a petition to compel a third party to honor the authority of an attorney-in-fact (Prob. Code, §§ 4406, 4541, subd. (f)), such as the one respondent filed, “if it appears that the proceeding is not reasonably necessary for the protection of the interests of the principal or *the principal’s estate*” (Italics added.) The death of a principal does not always render a petition to compel a third party to honor the authority of an attorney-in-fact moot. The factual allegations in the second amended NDC that were deemed admitted by the entry of respondent’s default do not establish that the petition respondent filed was mooted by the death of his mother. Nor do they establish that respondent continued to prosecute the petition even though he knew that it was not reasonably necessary to do so for the protection of his deceased mother’s estate.

Count Two – Respondent willfully violated section 6068, subdivision (c) (attorney’s duty to employ only means consistent with truth) by filing a pleading in the superior court on about January 9, 2012, that falsely implied, if not falsely represented, that his mother was still alive.

Count Three charges respondent with willfully violating section 6106 (moral turpitude) by knowingly or through gross negligence failing to inform the superior court and the five defendants of his mother's death for more than two months and by knowingly or through gross negligence implying that his deceased mother was still alive in the pleading respondent filed in the superior court on about January 9, 2012. Count three is DISMISSED with prejudice because it fails to provide respondent with adequate notice of a section 6106 violation. For example, count three does not allege the factual basis of the charged gross negligence. (See *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 168-169 [Fundamental due process mandates that the NDC allege sufficient factual detail to provide the respondent with a reasonable opportunity to prepare and present a defense and to prevent the respondent from being taken by surprise by the evidence offered at trial.]; § 6085 [In disciplinary proceedings, the attorney must "be given fair, adequate and reasonable notice" of the factual basis of the charges against him or her].)

Count Four – respondent willfully violated section 6068, subdivision (o)(3) (failing to report judicial sanctions of \$1,000 or more) by failing to report judicial sanctions in the amount of \$14,500 to the State Bar within 30 days of the time respondent knew of them.

Count Five – respondent willfully violated section 6103 (violation of court order) by failing to pay two court-ordered sanctions that combined total \$26,302.

Count Six charges respondent with willfully violating section 6106 (moral turpitude) by posting a false statement about the opposing counsel on the Internet when respondent knew or was grossly negligent in not knowing that the statement was false. Count six is DISMISSED with prejudice because it fails to provide respondent with adequate notice of a section 6106 violation. For example, count six does not allege the factual basis for respondent's alleged gross

negligence. (See *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 168-169; § 6085.)

Count Seven – respondent willfully violated section 6106 (moral turpitude) by taking pepper spray and a stun gun to a deposition; displaying both the pepper spray and stun gun at the deposition; threatening to use the pepper spray and stun gun on opposing counsel if the deposition “got out of hand”; and discharging the stun gun while pointing it towards the opposing counsel.

Case Number 14-O-04241

Count eight charges respondent with willfully violating section 6068, subdivision (b) (attorney’s duty to maintain respect due to courts and judicial officers) by filing a statement of disqualification and referring therein to two San Diego County Superior Court Judges by name and stating that one was the most corrupt superior court judge in San Diego County and that the other was the second most corrupt superior court judge in San Diego County. Count eight is DISMISSED with prejudice because it fails to state a disciplinable violation of section 6068, subdivision (b). As the review department held almost 20 years ago, the First Amendment prohibits disciplining an attorney for making a statement that impugns the honesty or integrity of a judge unless the statement is *false*. (*In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775, 783.) But count eight does not allege that respondent’s statements are false.

Furthermore, “statements of opinion are not disciplinable unless they imply or are based upon a false assertion of fact. [Citations.]” (*Id.* at p. 786.) Respondent’s statements are in the nature of an opinion, but count eight fails to allege that respondent’s opinions imply or were based upon a false assertion of fact.

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, the first amended NDC, and the second amended NDC were all properly served on respondent under rule 5.25;
- (2) respondent had actual notice of this proceeding, was properly given notice of the trial date, and attended the first day of trial before the entry of the default;
- (3) the default was properly entered under rule 5.81; 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 appear for the second day of the trial 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 Douglas James Crawford, State Bar number 202274, 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 and that the costs be 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 James Crawford, State Bar number 202274, 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. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: July 16, 2015



LUCY ARMENDARIZ
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 San Francisco, on July 16, 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:

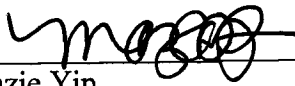
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

DOUGLAS J. CRAWFORD
4368 NIAGARA AVE
SAN DIEGO, CA 92107

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

ELI D. MORGENSTERN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 16, 2015.



Mazie Yip
Case Administrator
State Bar Court