

**PUBLIC MATTER**

**FILED**

SEP 30 2015

**STATE BAR COURT OF CALIFORNIA**

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

**HEARING DEPARTMENT – LOS ANGELES**

In the Matter of	)	Case No.: 14-O-04622-LMA
	)	
<b>VICTOR DEWITT,</b>	)	
	)	<b>DECISION AND ORDER OF</b>
<b>Member No. 53408,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
<u>A Member of the State Bar.</u>	)	

In this matter, respondent Victor Dewitt was charged with three counts of violations of the Rules of Professional Conduct and the Business and Professions Code.<sup>1</sup> 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.<sup>2</sup>

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 NDC and the attorney fails to have

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<sup>1</sup> Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

<sup>2</sup> Unless otherwise indicated, all references to rules are to this source.

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.<sup>3</sup>

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 December 14, 1972, and has been a member since then.

#### **Procedural Requirements Have Been Satisfied**

On January 27, 2015, the State Bar properly filed and served the NDC on respondent by certified mail, return receipt requested, 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.) It is unclear whether the State Bar received a return receipt card from the U.S. Postal Service.<sup>4</sup>

Reasonable diligence was used to notify respondent of this proceeding. The State Bar made several attempts to contact respondent without success. On February 5, 2015, the State Bar mailed letters to various addresses attributable to respondent. Included with each letter was a copy of the NDC. Moreover, copies of the February 5<sup>th</sup> letter and its attachment were sent to respondent's membership records fax number, as well as multiple possible email addresses. The

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<sup>3</sup> 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).)

<sup>4</sup> Rule 5.80(B)(1) requires that a motion for entry of default be supported by a declaration stating whether the signed return receipt for the NDC was received from the U.S. Postal Service. While the State Bar filed a declaration in support of its motion for entry of default, the declaration failed to indicate whether the return receipt card for the mailing containing the NDC had been signed by the member and/or received by the State Bar. Thus, the State Bar's declaration did not satisfy the rule 5.80(B)(1) requirement.

letter warned that respondent needed to file his response to the NDC by February 24, 2015; otherwise, the State Bar would file a motion for entry of default.

In addition to the above service, which was effective pursuant to statute, respondent had actual notice of this proceeding. On February 24, 2015, the State Bar received a message from respondent, which had been sent via facsimile. In his fax message, respondent indicated that he had received letters advising him of the State Bar's intention to file a motion for entry of default in this matter. In his message, respondent requested that the State Bar delay filing the motion for entry of default and explained that he intended to file his response to the NDC on February 25, 2015. However, as of March 3, 2015, the date of the execution of the declaration in support of the motion for entry of default, respondent had not filed a response to the NDC.

Respondent failed to file a response to the NDC. On March 5, 2015, the State Bar filed and properly served a motion for entry of respondent's default. Except for the fact that the supporting declaration failed to state whether a return receipt for the NDC, signed by respondent, had been received by the State Bar, the motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the deputy trial counsel, declaring the additional steps that he had 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 March 19, 2015. 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, and respondent 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 June 24, 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) there has been no contact with respondent since his default was entered; (2) there are no disciplinary matters pending against respondent; (3) respondent has one 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 July 21, 2015.

#### **Prior Record of Discipline**

Respondent has one prior record of discipline. Pursuant to a Supreme Court order filed on February 17, 1993, respondent was suspended for one year, the execution of which was stayed, and placed on probation for three years subject to the conditions of probation. Respondent stipulated to grossly mishandling his attorney trust account by failing to maintain client funds in his client trust account, commingling personal funds with client funds, and failing to promptly pay to the client at the client's request, client funds in respondent's possession, which the client was entitled to receive.

#### **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).)

**Case Number 14-O-04622 (The Dans Matter)**

Count One –respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to release file) by failing to promptly release the client papers and property to the client after respondent’s May 1, 2014 termination from employment and following the client’s May 1, 2014 request to respondent for the return of her file.

Count Two - respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render accounts of client funds) by failing to provide his client with an appropriate accounting, subsequent to her May 1, 2014 request that he provide her with such an accounting regarding the advanced legal fees, which he had received from her in November 2012, for legal services to be performed.

Count Three – respondent willfully violated section 6068, subdivision (i), by failing to provide substantive responses to two letters from the State Bar, which had been sent to and received by respondent, and which requested respondent’s response to the allegations of misconduct being investigated in case No. 14-O-04622.

**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 his disbarment.

### **RECOMMENDATION**

#### **Disbarment**

The court recommends that respondent Victor DeWitt 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.

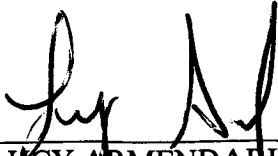
#### **Costs**

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 Victor DeWitt, State Bar number 53408, 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: September 30, 2015

  
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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 September 30, 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:

VICTOR DEWITT  
949 E YORBA LINDA BLVD  
PLACENTIA, CA 92870

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

WILLIAM S. TODD, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on September 30, 2015.

  
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Mazie Yip  
Case Administrator  
State Bar Court