PUBLIC MATTER

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MAR 10 2016

STATE BAR COURT
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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **RICHARD D. ACKERMAN,** **Member No. 171900,** A Member of the State Bar.	))))))	Case No.: **15-N-12501-WKM** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

INTRODUCTION

In this rule 9.20 proceeding, respondent RICHARD D. ACKERMAN was charged with willfully violating California Rules of Court, rule 9.20 by failing to file a declaration of compliance in accordance with rule 9.20(c)[1] as required by an order of the Supreme Court. Respondent failed to participate either in person or through counsel, and his default was entered. Thereafter, the State Bar's Office of the Chief Trial Counsel (OCTC) 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 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

[1] Rule 9.20(c) provides: "Within such time as the order may prescribe . . . , the member must file with the Clerk of the State Bar Court [a declaration] showing that he or she has fully [performed the acts specified in rule 9.20(a)]. The [declaration] must also specify an address where communications may be directed to the disbarred, suspended, or resigned member."

[2] Except where otherwise indicated, all further references to rules are to the Rules of Procedure of the State Bar.

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(NDC) and if the attorney fails to have the default set aside or vacated within 90 days, OCTC must file a petition requesting that the State Bar Court recommend the attorney's disbarment. 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 November 23, 1994. He has continuously been a member of the State Bar of California since that time.

Procedural Requirements Have Been Satisfied

On July 29, 2015, OCTC filed and properly served the NDC on respondent at his membership records address by certified mail, return receipt requested. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) However, the NDC served on respondent was later returned to OCTC as undeliverable.

On July 29, 2015, OCTC also sent a courtesy copy of the NDC to respondent at his membership records address by first class mail, regular delivery. The courtesy copy of the NDC was not returned to OCTC as undeliverable.

Thereafter, on August 13, 2015, the assigned Deputy Trial Counsel (DTC) sent respondent an email at respondent's membership records email address[3] asking respondent to contact him about this proceeding. The DTC received an automated email reply advising him that he could call respondent at a telephone number in the 951 area code. On August 13, 2015, the DTC telephoned respondent at that telephone number in the 951 area code, as well as at

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

respondent's membership records telephone number, and at respondent's most recent prior membership records telephone number. Each of those three telephone calls was answered by a voicemail system. The DTC left a voicemail message for respondent during each of those three telephone calls.

Later, on August 13, 2015, the DTC received a call from respondent's membership records phone number, and the caller identified himself to the DTC as respondent. Respondent stated that he was recently homeless, asked for a copy of the NDC, and gave the DTC a current mailing address on San Juan Street in Loma Linda, California (San Juan Street address) and a current email address at msn.com (msn.com email address).

On September 2, 2015, OCTC sent courtesy copies of the NDC to respondent at both the San Juan Street address and the msn.com email address. Also, on September 2, 2015, the DTC sent respondent an email at the msn.com email address reminding respondent of his obligation to maintain current contact information with the State Bar's membership records department. The DTC attached to that email a courtesy copy of the court's July 31, 2015, notice of assignment and initial status conference, which was set for September 4, 2015.

Respondent failed to file a response to the NDC and respondent did not appear at the September 4, 2015, initial status conference. On September 16, 2015, OCTC filed a motion for entry of respondent's default and properly served a copy of that motion on respondent at his membership records address by certified mail, return receipt requested. On that same day, OCTC also sent a courtesy copy of the motion for entry of default to respondent at the San Juan Street address.

Respondent did not file a response to the motion for entry of default or to the NDC, and his default was entered on October 2, 2015. The order entering respondent's default was properly served on respondent at his membership records address by certified mail, return receipt

requested. In addition, a courtesy copy of the order was mailed to respondent at the San Juan Street address. The default 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 that respondent be involuntarily enrolled as an inactive member of the State Bar of California in accordance with Business and Professions Code section 6007, subdivision (e). Respondent's inactive enrollment under that order became effective on October 5, 2015, and has continued since that time.

Respondent did not seek to have his default vacated or set aside. (Rule 5.83(B)&(C)(1) [attorney has 90 days to file motion to set aside default].) On January 15, 2016, OCTC filed a petition for disbarment after default and properly served it on respondent at his membership records address by certified mail, return receipt requested. On January 15, 2016, OCTC also sent a courtesy copy of the petition for disbarment to respondent at the San Juan Street address.

As required by rule 5.85(A), OCTC reported in the petition that (1) "Respondent has failed to contact [OCTC] since the default was entered on October 2, 2015"; (2) "No other investigations or disciplinary charges are pending against Respondent"; (3) "Respondent has two prior records discipline"; and (4) "The Client Security Fund has not paid any claims resulting from Respondent's misconduct." 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 February 10, 2016.

Prior Records of Discipline

Respondent has two prior records of discipline.[4] Respondent's first prior record of discipline is the Supreme Court's August 28, 2013, order in case number S211542 (State Bar Court case number 12-O-13461), in which respondent was placed on one year's stayed suspension and two years' probation on conditions, but no actual suspension. In his first prior

[4] The court admits into evidence the certified copies of respondent's two prior records of discipline, which are attached to the January 15, 2016, petition for disbarment.

record of discipline, respondent and OCTC entered into a stipulation regarding facts, conclusions of law, and disposition, in which respondent stipulated to repeatedly failing to perform legal services with competence (Rules Prof. Conduct, rule 3-110(A)) and failing to communicate with his client (Bus. & Prof. Code, § 6068, subd. (m)) in a single client matter.

Respondent's second prior record of discipline is the Supreme Court's February 6, 2015, order in case number S211542 (State Bar Court case number 14-PM-04575), in which respondent was placed on one year's stayed suspension and two years' probation on conditions, including a six-month actual suspension, in which respondent was ordered to comply with California Rules of Court, rule 9.20. In his second prior record of discipline, respondent and OCTC entered into a stipulation regarding facts, conclusions of law, and disposition, in which respondent stipulated to failing to timely file his first four quarterly probation reports and failing to take Ethics School no later than September 27, 2014.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a respondent's default, the factual allegations (but not the conclusion of law or the charges) in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82(2).) 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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Count One – respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned, or suspended attorneys) by failing to file a rule 9.20(c) compliance declaration with the Clerk of the State Bar Court no later than April 17, 2015, in accordance with

the Supreme Court's February 6, 2015, order in case number S211542 (State Bar Court case number 14-PM-04575).

Disbarment is Recommended

In light of the forgoing, the court finds 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) respondent's 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 Richard D. Ackerman, State Bar number 171900, 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 again 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 Richard D. Ackerman, State Bar number 171900, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after service of this decision and order by mail. (Rule 5.111(D).)

Dated: March 10, 2016.

W. KEARSE McGILL
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 March 10, 2016, 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 D. ACKERMAN
LAW OFFICES OF R.D. ACKERMAN
27638 MOONRIDGE DR
MENIFEE, CA 92585

Courtesy copy:

RICHARD D ACKERMAN
1106 SAN JUAN ST.
LOMA LINDA, CA 92534

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

Shane C. Morrison, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 10, 2016.

Julieta E. Gonzales
Case Administrator
State Bar Court