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MAY 24 2016

**STATE BAR COURT
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LOS ANGELES**

PUBLIC MATTER

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES**

In the Matter of)	Case No.: 15-O-12442-YDR
)	
DAVID ANTHONY HARPER,)	
)	DECISION AND ORDER OF
Member No. 112993,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

Respondent David Anthony Harper ("Respondent") was charged with failing to comply with certain conditions attached to his disciplinary probation. 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") 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 rules 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

Jurisdiction

Respondent was admitted to practice law in this state on May 17, 1984, and has been a member since that date.

Procedural Requirements Have Been Satisfied

On July 30, 2015, the State Bar filed and properly 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.) On August 31, 2015, the State Bar received the return receipt card signed by "David Harper."

Thereafter, the State Bar took additional steps to notify Respondent of these proceedings. From August 6, 2015, through September 18, 2015, the State Bar: (1) called Respondent at his membership records phone number and left a voicemail message indicating that an NDC had been filed, his response was overdue, and a motion for default would be filed if Respondent did not file a response soon; (2) sent an email to Respondent at his membership records email address,³ with a copy of the NDC attached, notifying Respondent that an NDC had been served on him and that he failed to file a response; and (3) sent an email to Respondent at his membership records email address indicating that if Respondent did not contact the State Bar, a motion for default would be filed by September 19, 2015. Respondent never contacted the State Bar.

³ 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).)

Despite the State Bar's efforts, Respondent failed to file a response to the NDC. On September 24, 2015, the State Bar filed and properly served a motion for entry of Respondent's default on Respondent at his membership records address. The motion complied with all of the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial 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 October 16, 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. 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 January 27, 2016, 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 is no other disciplinary matter pending against Respondent; (3) Respondent has one prior disciplinary record; and (4) the Client Security Fund has not paid any claims as a result of 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 March 2, 2016.

Prior Record of Discipline

Respondent has one prior record of discipline. On February 19, 2014, the Supreme Court filed an order suspending Respondent for one year, stayed, and placed him on probation for one year with conditions, including a 90-day period of actual suspension. Respondent had committed professional misconduct and was disciplined by the Supreme Court of Florida. Respondent's misconduct warranted discipline in the California under the laws or rules applicable in this State. Respondent's misconduct included: (1) failing to perform legal services with competence; (2) making statements, without a factual basis, which impugned the integrity and motivation of judges; (3) failing to obey a court order; and (4) making false statements to a tribunal.

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

Case No. 15-O-12442 (Probation Violation Matter)

Respondent willfully violated Business and Professions Code section 6068, subdivision (k), (duty to comply with probation conditions) by failing to comply with certain specified conditions attached to the disciplinary probation in State Bar Court case number 12-J-10708.

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 disbarment.

RECOMMENDATION

Disbarment

The court recommends that Respondent David Anthony Harper, State Bar number 112993, 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.

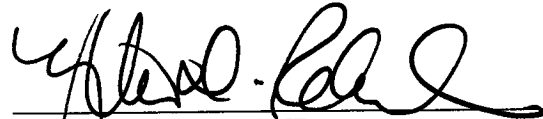
Costs

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 **David Anthony Harper**, State Bar number 112993, 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: May 24, 2016



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 May 24, 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:

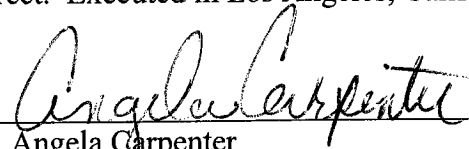
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DAVID ANTHONY HARPER
2015 W CHEYENNE ROAD
COLORADO SPRINGS, CO 80906

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

Jamie J. Kim, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 24, 2016.



Angela Carpenter
Case Administrator
State Bar Court