

PUBLIC MATTER

FILED

MAR 23 2017

STATE BAR COURT CLERK'S OFFICE
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**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO**

In the Matter of)	Case No. 15-O-14345-PEM
)	
STEVEN MICHAEL SCULLY,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 263092.)	ENROLLMENT
)	

Respondent Steven Michael Scully (respondent) was charged with violations of the Business and Professions Code¹ and the State Bar Rules of Professional Conduct. He failed to participate, either in person or through counsel, and his default was entered. The Office of Chief Trial Counsel of the State Bar of California (State Bar) 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 (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.³

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

² Unless otherwise indicated, all references to rules are to this source

³ 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 June 1, 2009, and has been a member since then.

Procedural Requirements Have Been Satisfied

On September 7, 2016, the State Bar filed and properly served the NDC in this matter on respondent by certified mail, return receipt requested, and by regular first-class mail, at his membership records address, and by regular first-class mail to an address in San Jose, California, which was contained in respondent's case file. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The State Bar received a return card on September 23, 2016, "signed by Steven Scully."⁴

Between September 9 and 19, 2016, the State Bar and respondent's wife (Ms. Scully) exchanged email communications. Each of these communications was also copied to respondent at his private email address maintained with the State Bar.⁵ In an email from STC Kagan to Ms. Scully, Ms. Kagan informed Ms. Scully that the NDC was sent to the post office box, with a courtesy copy to Ms. Scully's mother's address. STC Kagan also stated, in pertinent part, "As we discussed, if your husband wishes for these matters to proceed by default (which will ultimately result in disbarment), then he does not need to take any action in response to the charges." In

⁴ See declaration of Senior Trial Counsel Susan I. Kagan (STC Kagan) attached to the State Bar's motion for the entry of respondent's default.

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

response to STC Kagan's email, Ms. Scully stated, in pertinent part, "The default is what he states he wants."

Respondent failed to file a response to the NDC. On October 4, 2016, the State Bar filed and properly served a motion for entry of respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the assigned senior trial counsel. (Rule 5.80.) The motion notified respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent still did not file a response to the motion, and his default was entered on October 20, 2016. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar pursuant to section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time. The order entering the default and enrolling respondent inactive was served on respondent at his membership records address by certified mail, return receipt requested.⁶

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 26, 2017, the State Bar filed and properly served a petition for disbarment.⁷ As required by rule 5.85(A), the State Bar reported in the petition that: (1) there has not been any contact with respondent since the date that the order entering respondent's default was served;⁸ (2) there are other disciplinary investigations pending against respondent; (3) respondent does not have any prior record of discipline; and (4) the Client Security Fund has not paid out any claims as a result of

⁶ The certified mail return receipt was returned to the State Bar Court reflecting that the order entering respondent's default was received by "Steven Scully."

⁷ The petition for disbarment was served on respondent by certified mail, return receipt requested, and by regular mail to his membership records address.

⁸ This is the same date that respondent's default was entered.

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 22, 2017.

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(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).)

Case Number 15-O-14345 (Drake Matter)

Count One – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by repeatedly failing to take any steps to obtain a certificate of rehabilitation or expunge his client's criminal convictions.

Count Two – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by failing to take any action on his client's behalf after sending a text message on March 28, 2015, to the client, thereby constructively terminating his employment, and thereafter failing to inform his client that he was withdrawing from employment.

Count Three – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to promptly refund, upon respondent's termination of employment, any part of the \$2,000 advanced fee he received from his client on March 16, 2015, none of which he earned.

Count Four – Respondent willfully violated rule 4-100(B)(3) (maintain records of client property/render appropriate accounts) by failing to render an appropriate accounting to his client,

following respondent's termination of employment on March 28, 2015, regarding the \$2,000 advanced fees for legal services received from his client.

Count Five – Respondent willfully violated section 6068, subdivision (m) (failure to communicate) by failing to respond promptly to two text messages, three emails and 16 telephonic inquiries made by his client between April 21 and August 3, 2015, which respondent received in a matter in which he had agreed to provide legal services.

Count Six – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate) by failing to provide a response to two letters from the State Bar which he received that requested his response to allegations of misconduct being investigated in this matter.

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.

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RECOMMENDATIONS

Disbarment

The court recommends that respondent Steven Michael Scully, State Bar number 263092, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Restitution

The court also recommends that respondent be ordered to make restitution to Brian Drake in the amount of \$2,000, plus 10 percent interest per year from March 16, 2015. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

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 Steven Michael Scully, State Bar number 263092, be involuntarily enrolled as

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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: March 23, 2017



PATE E. McELROY
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 March 23, 2017, 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:

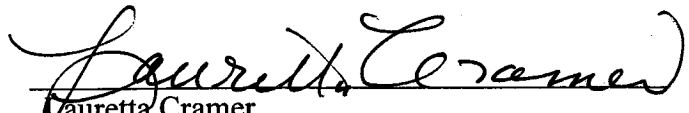
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

STEVEN M. SCULLY
LAW OFFICE OF STEVEN M.
SCULLY
PO BOX 3681
MODESTO, CA 95352 - 3681

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

Susan I. Kagan, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 23, 2017.


Lauretta Cramer
Case Administrator
State Bar Court