

PUBLIC MATTER

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JAN 18 2017

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 15-O-14379-DFM
)	
GREGORY EDGAR STEARNS,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 80704.)	ENROLLMENT
_____)	

Respondent Gregory Edgar Stearns (Respondent) was charged with one count of moral turpitude for misrepresenting his compliance with MCLE requirements in willful violation of Business and Professions Code section 6106. Even though Respondent had notice of the trial date, he failed to appear at the trial, and his default was entered. Thereafter, the Office of 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 the attorney fails to have the default set aside or vacated within 45 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

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

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 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 June 23, 1978, and has been a member of the State Bar since then.

Procedural Requirements Have Been Satisfied

On May 9, 2016, the State Bar filed and properly served a Notice of Disciplinary Charges (NDC) on Respondent by certified mail, return receipt requested, and by regular U.S. mail at his membership records address, which is a post office box in Key West, Florida. Respondent filed a response to the NDC on June 16, 2016. In his response, he acknowledged that, after being requested by the State Bar's auditor to present proof of his compliance with the MCLE obligation, he could locate only six hours of participatory study certificates and that his "computation [of] the participatory study credit hours was off by approximately six hours, for which he is truly sorry and extremely remorseful." In this response, Respondent provided as his current address the same post office address in Key West, Florida.

Although he was sent proper notice of an in-person status conference, Respondent failed to participate in that status conference on June 13, 2016. Then, on June 13, 2016, the court filed an order setting an in-person pretrial conference for August 29, 2016, at 10:15 a.m.,³ and setting trial for 9:30 a.m. on September 7, 2016. The order setting the trial was properly served by first-class mail, postage prepaid, to Respondent at the Key West, Florida address. (Rule 5.81(A).)

³ On August 19, 2016, the court filed and properly served on Respondent at his membership records address a Notice of Change of In-Person Pretrial Conference Date and/or Time changing the pretrial conference to 11:00 a.m. on September 6, 2016. The notice also reflected that trial remained on calendar for 9:30 a.m. on September 7, 2016.

Respondent failed to participate in the September 6, 2016, pretrial conference. Then, when the case was called for trial on September 7, 2016, the State Bar appeared but Respondent did not.⁴ The court entered Respondent's default in an order filed on September 7, 2016. The order was properly served on Respondent by certified mail, return receipt requested, and by first-class mail, postage prepaid, at Respondent's membership records address. (Rule 5.81(B).) The order notified Respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. The order also placed Respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time. The return receipt was received by the court on September 21, 2016, signed by Respondent.

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].) On November 8, 2016, the State Bar properly filed and served a petition for disbarment on Respondent.⁵ As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar has not received any contact from Respondent since his default was entered; (2) there are no other disciplinary charges or 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 Respondent's misconduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate his default. The case was submitted for decision on December 20, 2016.

⁴ On August 29, 2016, the court received from Respondent a letter, dated August 24, 2016, stating that he would not be able "to attend the proceedings in person in Los Angeles, California on September 7, 2016." No motion to continue the trial, however, was ever filed.

⁵ The petition for disbarment was served by certified mail, return receipt requested, and a courtesy copy was sent by first-class mail to Respondent at his membership records address.

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.) 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 No. 15-O-14379 (MCLE Compliance Matter)

Respondent willfully violated section 6106 (moral turpitude, dishonesty or corruption) by falsely reporting to the State Bar, under penalty of perjury, that he had fully complied with his minimum continuing legal education (MCLE) requirements for the period of February 1, 2011, to January 31, 2014, when Respondent was grossly negligent in not knowing that he had failed to complete the MCLE requirements for that period, thereby committing an act of dishonesty.

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) Respondent had adequate notice of the trial date prior to 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 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 **Gregory Edgar Stearns**, State Bar number 80704, 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 **Gregory Edgar Stearns**, State Bar number 80704, 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: January 18, 2017


DONALD F. MILES
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 January 18, 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 Los Angeles, California, addressed as follows:

GREGORY EDGAR STEARNS
PO BOX 5813
KEY WEST, FL 33045

- 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 Los Angeles, California, on January 18, 2017.



Mazie Yip
Case Administrator
State Bar Court