

PUBLIC MATTER

**FILED**  
**AUG 30 2016** P.B.  
STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

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

In the Matter of	)	Case No.: 16-N-10396-WKM
	)	
<b>ROBERT G. SCURRAH, JR.,</b>	)	
	)	<b>DECISION AND ORDER OF INVOLUNTARY</b>
<b>Member No. 82766,</b>	)	<b>INACTIVE ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

**INTRODUCTION**

In this rule 9.20 proceeding, respondent ROBERT G. SCURRAH, JR., is 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)<sup>1</sup> 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.<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 notice of disciplinary charges

---

<sup>1</sup> 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."

<sup>2</sup> Except where otherwise indicated, all further references to rules are to the Rules of Procedure of the State Bar.

(NDC) and if the attorney fails to have the default set aside or vacated within 90 days, OCTC will file a petition requesting that the State Bar Court 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 this state on November 29, 1978, and has been a member of the State Bar of California since that time.

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

On February 16, 2016, 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.) On February 25, 2016, OCTC received the return receipt for the NDC served on respondent. The receipt appears to have been signed by Jon McGrath.

On February 22, 2016, OCTC 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 or otherwise by the United States Postal Service. On February 22, 2016, OCTC also attempted to reach respondent by telephoning him at his membership records telephone number and by sending an email to his membership records email address.<sup>4</sup>

---

<sup>3</sup> If the court determines that any due process requirements is 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> 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).)

On February 24, 2016, OCTC sent an email to Attorney Jon McGrath, who had, at some point, communicated with the State Bar's Office of Probation on respondent's behalf. In that email, OCTC asked Attorney McGrath if he had any contact information for respondent. Later that same day, respondent left a voicemail message for the Deputy Trial Counsel (DTC) assigned to this case, and the assigned DTC returned respondent's telephone call and spoke with respondent on the telephone. During that telephone conversation, respondent indicated that he had received the NDC and was aware of the then upcoming initial status conference set for March 23, 2106.<sup>5</sup>

Respondent failed to file a response to the NDC. On March 15, 2016, 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. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence from the DTC detailing the additional steps OCTC took to provide respondent with actual notice of this proceeding. (Rule 5.80.) The motion for default 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 for entry of default or to the NDC, and his default was properly entered on April 5, 2016. The order entering respondent's default was properly served on respondent at his membership records address by certified mail, return receipt requested. 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  
///

---

<sup>5</sup> Respondent did not, however, appear at the initial status conference on March 23, 2016.

Business and Professions Code section 6007, subdivision (e).<sup>6</sup> Respondent's inactive enrollment under that order became effective on April 8, 2016, 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 July 12, 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.

OCTC reported in the petition that (1) "Respondent has failed to contact [OCTC] since the default was entered on April 5, 2016"; (2) one disciplinary investigation is pending against respondent; (3) "Respondent has a prior record of discipline";<sup>7</sup> and (4) the Client Security Fund has not paid any claims resulting from respondent's misconduct. (See rule 5.85(A).)

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 August 16, 2016.

### **Prior Records of Discipline**

Respondent has two prior records of discipline.

#### ***Scurrah I***

On September 9, 2015, the Supreme Court filed an order in case number S225439 (State Bar Court case number 11-O-17398, etc.), styled *In re Robert G. Scurrah, Jr., on Discipline (Scurrah I)*, placing respondent on one year's stayed suspension and two years' probation on conditions, including a ninety-day period of actual suspension that will continue until respondent pays restitution with interest for almost \$27,000 in legal fees that he charged and collected in

---

<sup>6</sup> Except where otherwise indicated, all further statutory references are to the Business and Professions Code.

<sup>7</sup> This statement is incorrect as respondent has two prior records of discipline. The error is harmless because certified copies of both respondent's prior records are attached to the assigned DTC's July 12, 2016, declaration in support of the petition for disbarment. Those certified copies of respondent's two prior records are admitted into evidence.

seven different client matters in violation of Civil Code section 2944.7 (section 2944.7).<sup>8</sup> An attorney's violation of section 2944.7 subjects the offending attorney to discipline at least until January 1, 2017. (§ 6106.3). In *Scurrah I*, respondent was found culpable of charging and collecting legal fees in violation of section 2944.7 in a total of nine separate client matters. Respondent refunded the fees in two of the nine client matters before the trial in *Scurrah I*.

In aggravation, respondent committed multiple acts of misconduct and caused significant client harm. In mitigation, respondent had practiced law for more than 30 years without discipline; acted in good faith; and had significant community service. Respondent was also given limited mitigation for his good character testimony and for his cooperation with OCTC by stipulating to the facts.

### ***Scurrah II***

On May 19, 2016, the Supreme Court filed an order in case number S233387 (State Bar Court case number 12-O-17964, etc.), styled *In re Robert G. Scurrah, Jr., on Discipline* (*Scurrah II*), placing respondent on one year's stayed suspension and two years' probation on conditions, including a six-month period of actual suspension that will continue until respondent pays restitution with interest for more than \$68,000 in legal fees that he charged and collected in 21 different client matters in violation of section 2944.7. In *Scurrah II*, respondent was found culpable, in twenty-two separate client matters, of charging and collecting legal fees in violation of section 2944.7 and, in an additional single client matter, of charging (but not collecting) a legal fee in violation of section 2944.7. Respondent refunded the fee he collected in one of the twenty-two cases before the trial in *Scurrah II*.

---

<sup>8</sup> According to *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, 232, section 2944.7 "plainly prohibits *any person* engaging in loan modifications from collecting *any fees* related to such modifications until *each and every* service contracted for has been completed." (Original italics.) Thus, section 2944.7's proscription of advanced compensation applies to attorneys when they perform home mortgage loan modification services or other forms of home mortgage loan forbearance services. (*Ibid.*)

In aggravation, respondent had one prior record of discipline (i.e., *Scurrah I*), but its aggravating weight was significantly reduced because respondent committed misconduct in *Scurrah II* before imposition of the discipline in *Scurrah I*. In addition, respondent committed multiple acts of misconduct and caused significant client harm. In mitigation, respondent was given significant mitigation for his cooperation with OCTC by stipulating to the facts and his culpability in all 23 client matters in *Scurrah II*, along with other mitigation factors established, including candor, community service, and good faith.

### **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).)

### **Case Number 16-N-10396 (Rule 9.20 Proceeding)**

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 November 18, 2015, in accordance with the Supreme Court's September 9, 2015, order in case number S225439 (State Bar Court case number 11-O-17398, etc.).<sup>9</sup>

///

---

<sup>9</sup> In the NDC, OCTC inartfully refers to the Supreme Court's September 9, 2015, order in case number S225439 as "Supreme Court Order no. S225439." S225439 is not an order number; it is a case number. Nonetheless, respondent was given adequate notice of the charges against him because a copy of the Supreme Court's September 9, 2015, order in case number S225439 was attached to the NDC as an exhibit.

### **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 Robert G. Scurrah, Jr., State Bar number 82766, 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 Robert G. Scurrah, Jr., State Bar number 82766, 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. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: August 30, 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 August 30, 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:

**ROBERT G. SCURRAH, JR.  
LAW OFFICES OF ROBERT G SCURRAH  
145 W MAIN ST STE 200  
TUSTIN, CA 92780**

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

**DREW D. MASSEY, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 30, 2016.



Paul Barona  
Case Administrator  
State Bar Court