



PUBLIC MATTER

FILED

FEB 22 2017

V.A.

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

In the Matter of)	Case No.: 16-N-12813-LMA
)	
STEVEN MICHAEL McCARTHY,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 85433)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Steven Michael McCarthy (Respondent) was charged with failing to comply with California Rules of Court, rule 9.20(c). He did not file a response to the notice of disciplinary charges (NDC), 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.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 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

Respondent was admitted to practice law in this state on May 31, 1979, and has been a member since then.

Procedural Requirements Have Been Satisfied

On July 25, 2016, 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.)

Respondent had actual notice of this proceeding. He exchanged emails with a Deputy Trial Counsel for the State Bar between August 15 and August 31, 2016. In their email exchange, the Deputy Trial Counsel sent Respondent a copy of the NDC, provided him with the date and time of the initial status conference, informed him that the State Bar intended to file a default motion, and provided him with the court's contact information.

Respondent thereafter failed to appear for the initial status conference and failed to file a response to the NDC. On September 8, 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 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 5, 2016. 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, and 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].) The case was reassigned to the undersigned judge on October 21, 2016.

On January 18, 2017, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar last had contact with Respondent on November 21, 2016; (2) Respondent has other disciplinary matters pending; (3) Respondent has a prior record of discipline; and (4) the Client Security Fund (CSF) has not paid out any claims resulting from Respondent's conduct. 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 14, 2017.

Respondent has been disciplined on two prior occasions. Pursuant to a Supreme Court order filed on December 9, 2014, Respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for two years. In this matter, Respondent stipulated to discipline in this state for professional misconduct he was found culpable of committing in the State of Oregon. Said misconduct included failing to perform legal services with competence, failing to respond to reasonable client status inquiries, and failing to keep clients reasonably informed of significant developments.

Pursuant to a Supreme Court order filed on December 16, 2015, Respondent's probation was revoked and he was suspended for one year, the execution of which was stayed, and he was placed on probation for two years, including a 90-day period of actual suspension. In this matter,

Respondent was found culpable of failing to comply with the terms of his disciplinary probation. Respondent did not participate in the proceedings.

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

Case Number 16-N-12813 (Rule 9.20 Matter)

Count One – Respondent violated California Rules of Court, rule 9.20 (duties of disbarred, resigned, or suspended attorneys) by failing to file proof of compliance as required by rule 9.20(c) as ordered by the Supreme Court in its December 16, 2015 Order.

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 actual notice 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 actual 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 Steven Michael McCarthy be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

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 McCarthy, State Bar number 85433, 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. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: February 22, 2017



LUCY ARMENDARIZ
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 February 22, 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:

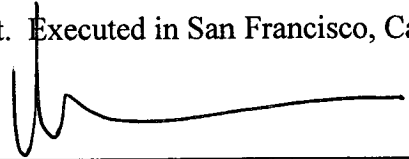
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

STEVEN MICHAEL MCCARTHY
POB 3524
DELAND, FL 32721

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

Michaela F. Carpio, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 22, 2017.



Vincent Au
Case Administrator
State Bar Court