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**STATE BAR COURT
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PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 16-O-11023-YDR
)	
MARTIN EDGAR KELLER,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 104159.)	ENROLLMENT
)	

Respondent Martin Edgar Keller (Respondent) was charged with four counts of misconduct. He failed to participate in these proceedings either in person or through counsel, and his default was entered. Thereafter, the Office of Chief Trial Counsel (OCTC) 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 that the court recommend the attorney's disbarment.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.

¹ Unless otherwise indicated, all references to rules are to this source. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

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).)



FINDINGS AND CONCLUSIONS

Jurisdiction

Respondent was admitted to practice law in this state on November 22, 1982, and has been a member since that date.

Procedural Requirements Have Been Satisfied

On August 31, 2016, OCTC filed and properly served the NDC on Respondent by certified mail, return receipt requested, at Respondent's membership records address. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC was never returned to OCTC by the U.S. Postal Service.

Thereafter, OCTC took additional steps to notify Respondent about these proceedings. From August 31, 2016, through September 26, 2016, OCTC: (1) sent courtesy copies of the NDC by regular first-class mail to Respondent at his membership records address and to three alternative addresses; (2) emailed a courtesy copy of the NDC to Respondent at the private email address Respondent provided to the State Bar; (3) twice called Respondent at his membership records phone number but the number was disconnected or no longer in service; (4) attempted to contact Respondent by his membership records fax number but the fax number was disconnected or no longer in service; (5) contacted Respondent's assigned probation deputy from a prior disciplinary proceeding to determine if Respondent had contact with the Office of Probation or provided alternate contact information, but Respondent had not communicated with the Office; and (6) performed internet searches to obtain alternate contact information for Respondent, but no additional information was found.

Respondent failed to file a response to the NDC. On September 30, 2016, OCTC properly filed and 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 OCTC 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 20, 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. 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 February 2, 2017, OCTC properly filed and served the petition for disbarment on Respondent at his official membership records address. As required by rule 5.85(A), OCTC reported in the petition that: (1) there has been no contact with Respondent since his default was entered; (2) there are two other matters pending against Respondent; (3) Respondent has two prior discipline records; 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, 2017.

Prior Record of Discipline

Respondent has two prior records of discipline. Pursuant to an order of the Supreme Court filed on August 31, 2011, Respondent was suspended for two years, stayed, and placed on probation for two years subject to conditions, including a 30-day period of actual suspension. Respondent stipulated that he was culpable of a single ethical violation of intentionally,

recklessly, or repeatedly failing to perform legal services with competence, in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

In his second prior, pursuant to an order of the Supreme Court filed on April 29, 2016, Respondent was suspended for two years, stayed, and placed on probation for four years subject to conditions, including a six-month period of actual suspension. Respondent stipulated to 11 violations of the Business and Professions Code and the Rules of Professional Conduct. Respondent was culpable of: (1) intentionally, recklessly, or repeatedly failing to perform with competence (rule 3-110(A)); (2) failing to promptly respond to client inquiries (§ 6068, subd. (m)); (3) the improper withdrawal from representation (rule 3-700(A)(2) [three counts]); (4) failing to cooperate and participate in a disciplinary investigation (§ 6068, subd. (i) [three counts]); (5) making false statements in probation reports (§ 6106); (6) failing to comply with probation conditions (§ 6068, subd. (k)); and (7) failing to promptly release a client file (rule 3-700(D)(1)).

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. 16-O-11023 (The Geheb Matter)

Count One - Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform any legal services for his client for which he was retained.

Count Two - The court does not find Respondent culpable of willfully violating section 6068, subdivision (b), as the facts deemed admitted as a result of the entry of Respondent's

default do not support a finding by clear and convincing evidence that Respondent failed to maintain the respect due to the courts of justice and judicial officers.

Count Three - Respondent willfully violated rule 3-700(A)(1) of the Rules of Professional Conduct (failure to obtain court permission to withdraw) by withdrawing from employment in a proceeding before a court without its permission when the rules of the court required that he obtain the court's permission.

Count Four - Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to three OCTC letters that Respondent received, which requested a response to the allegations of misconduct being investigated.

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 Martin Edgar Keller, State Bar number 104159, 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 Martin Edgar Keller, State Bar number 104159, 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: April 20, 2017



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 April 21, 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:

MARTIN EDGAR KELLER
323 W COURT ST STE 302
SAN BERNARDINO, CA 92401

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

Charles T. Calix, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 21, 2017.



Angela Carpenter
Case Administrator
State Bar Court