

PUBLIC MATTER

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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No. 16-O-13511-PEM
)	
STEVEN RANDALL CUMMINGS,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 150518.)	ENROLLMENT
)	

Respondent Steven Randall Cummings (respondent) was charged with failing to comply with certain conditions attached to his disciplinary probation. He failed to file a response to the Notice of Disciplinary Charges (NDC) in this matter, 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

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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 December 5, 1990, and has been a member since then.

Procedural Requirements Have Been Satisfied

On September 12, 2016, the State Bar filed and properly served the NDC in this matter on respondent by both certified mail, return receipt requested, and U.S. first-class mail to his membership records address. On that same date, a copy of the NDC was sent to respondent's membership records email address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The return receipt card for the certified mail was not received by the State Bar.

Thereafter, the State Bar (1) reviewed respondent's probation case file to determine whether respondent had provided any updated contact information; (2) attempted to reach respondent by telephone at his membership records telephone number; and (3) notified respondent at his membership records email address³ that, as far as the assigned deputy trial counsel was aware, respondent had not contacted the State Bar in response to the NDC and, unless respondent contacted the assigned deputy trial counsel, a motion for entry of respondent's default would be filed. A copy of the NDC was attached to the email.⁴

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³ Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

⁴ The court notes that, according to the declaration of Senior Trial Counsel Erica L.M. Dennings, it appears that prior to the filing of the NDC, respondent participated in an early neutral evaluation conference in this matter.

Respondent failed to file a response to the NDC. On October 13, 2016, the State Bar filed and properly served a motion for entry of default on respondent by certified mail, return receipt requested, to his membership records address and by email to his membership records email address. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar senior trial counsel declaring the additional steps taken to provide notice to respondent (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 did not file a response to the motion, and his default was entered on October 31, 2016. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested.⁵ 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 also 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 23, 2017, the State Bar filed and properly served the petition for disbarment on respondent at his membership records address by certified mail, return receipt requested, and by U.S. first-class mail. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has not had any contact with respondent since his default was entered;⁶ (2) there are other investigations pending against respondent;⁷ (3) respondent has a record of prior 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

⁵ The order was returned to the court reflecting that it was not deliverable as addressed and the postal service was unable to forward it.

⁶ The declaration of Senior Trial Counsel Erica L.M. Dennings reflects that there has been no contact with respondent since June 20, 2016.

⁷ These matters are currently abated.

the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on March 28, 2017.⁸

Prior Record

Respondent has two prior records of discipline. On February 2, 2005, the State Bar Court filed an order imposing a public reproof with conditions for one year on respondent based on his willful violation of rules 3-110(A) and 3-700(A)(2) of the State Bar Rules of Professional Conduct and sections 6068, subdivisions (m) and (i) of the Business and Professions Code. Respondent stipulated to discipline in this prior disciplinary matter.

Pursuant to a Supreme Court order filed on March 19, 2015, respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for two years with conditions, including that he be suspended for the first six months of probation. Respondent entered into a stipulation as to facts, conclusions of law and disposition in this prior disciplinary matter. Respondent stipulated that he willfully violated rule 4-100(A) of the State Bar Rules of Professional Conduct and sections 6106 and 6068, subdivision (i), of the Business and Professions Code.

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).)

⁸ The State Bar failed to include a copy of respondent's prior records of discipline with its disbarment petition. Therefore, on February 24, 2017, the court filed an order requiring the State Bar to file an authenticated copy of respondent's prior record of discipline with the court within five days after service of the court's order. On March 2, 2017, the State Bar filed and served on respondent by certified mail, return receipt requested, and U.S. first-class mail, a response to the court's order, attaching certified copies of respondent's prior records of discipline.

Case Number 16-O-13511 (Probation Violation Matter)

By failing to timely submit four quarterly reports, and by failing to provide satisfactory proof of attendance at a session of Ethics School and Client Trust Accounting School and passage of the test given at the end of those sessions by a date certain, respondent failed to comply with certain conditions attached to the disciplinary probation in State Bar case No. 13-O-17393-PEM in willful violation of Business and Professions Code section 6068, subdivision (k) (duty to comply with probation conditions).

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 respondent Steven Randall Cummings 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.

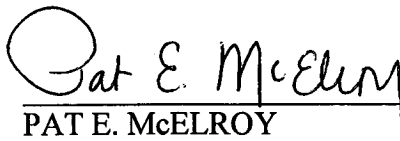
Costs

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 Steven Randall Cummings, State Bar number 150518, 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 17, 2017


PAT 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 April 17, 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 R. CUMMINGS
PO BOX 26852
FRESNO, CA 93729
- ☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:
- ☐ by overnight mail at , California, addressed as follows:
- ☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:
- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Erica L. M. Dennings, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 17, 2017.


George Hue
Case Administrator
State Bar Court