

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 11-N-14184-LMA
)	
RANDALL KEMP RUPP,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 165774,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Randall Kemp Rupp (respondent) was charged with willfully violating California Rules of Court, rule 9.20, by failing to timely comply with the provisions of a Supreme Court order requiring compliance with California Rules of Court, rule 9.20, by not filing a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c). He failed to participate either in person or through counsel, and his default was entered. The Office of the 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 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),

¹ Unless otherwise indicated, all references to rules are to this source.

and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to 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.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on September 20, 1993, and has been a member since then.

Procedural Requirements Have Been Satisfied

On July 29, 2011, 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.) The NDC was returned to the State Bar by the United States Postal Service (USPS) as unclaimed.

Thereafter, the State Bar attempted to reach respondent by sending a letter by first-class mail to respondent's membership records address, enclosing a copy of the NDC. The State Bar also attempted to reach respondent by telephone at respondent's membership records telephone number and by leaving a message at another number for respondent obtained during an internet search. An internet search for other addresses for respondent was not successful. The State Bar also telephoned directory assistance for the area which includes respondent's membership records address, but it had no listing for respondent.

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(E)(2).)

Respondent failed to file a response to the NDC. On September 16, 2011, the State Bar properly served a motion for entry of respondent's default. The motion, which was filed on September 20, 2011, 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 4, 2011. 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 also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On May 7, 2012, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) there are no other pending investigations or disciplinary charges; (3) respondent has a record of prior discipline; and (4) the Client Security Fund (CSF) has paid out claims totaling \$10,376.96 as to respondent. 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 June 5, 2012.

Respondent has been disciplined on two prior occasions.³ Pursuant to a Supreme Court order filed on December 2, 2009, respondent was suspended for two years, the execution of

³ The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence and directs the Clerk to include copies in the record of this case.

which was stayed, subject to conditions including that respondent be suspended from the practice of law for a minimum of 90 days and until he makes specified restitution and until the State Bar Court grants a motion to terminate his suspension. The misconduct involved two client matters. Respondent was found culpable of failing to (1) perform legal services with competence; (2) respond promptly to reasonable client status inquiries; (3) take reasonable steps to avoid reasonably foreseeable prejudice to his client upon termination of employment; (4) promptly release all client papers and property to the client; (5) refund promptly unearned fees; (6) render appropriate accounts to a client; and (7) cooperate and participate in a disciplinary investigation. Respondent did not file a response to the NDC in this matter, and his default was entered.

Pursuant to a Supreme Court order filed on April 27, 2011, respondent was suspended for three years, the execution of which was stayed, subject to conditions including that respondent be suspended from the practice of law for a minimum of one year and until he makes specified restitution and until the State Bar Court grants a motion to terminate his suspension.

Respondent, among other things, was also ordered to comply with California Rules of Court, rule 9.20. The misconduct involved one client matter and one non-client matter. Respondent was found culpable of failing to (1) perform legal services with competence; (2) take reasonable steps to avoid reasonably foreseeable prejudice to his client upon termination of employment; (3) keep a client reasonably informed of significant developments in her case; (4) render appropriate accounts to a client; (5) promptly refund an unearned fee; (6) cooperate in a disciplinary investigation; and (7) maintain a current address and telephone number with the State Bar's membership records office. Respondent was also found culpable of violating rule 9.20(c) by filing his compliance declaration late. Respondent failed to file a response to the NDC in this matter, and his default was entered.

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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(E)(1)(d).)

Case Number 11-N-14184 (Rule 9.20 Matter)

Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys), by not filing a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), thereby failing to timely comply with the provisions of a Supreme Court order filed April 27, 2011, requiring compliance with California Rules of Court, rule 9.20.

Disbarment is Mandated under the Rules of Procedure

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment must be 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, as the NDC was served on respondent at his membership records address by certified mail, return receipt requested; a letter, enclosing a copy of the NDC, was sent by first-class mail to respondent's membership records address; the State Bar attempted to reach respondent by telephone at his membership records telephone number and at another telephone number obtained during an internet search; the State Bar attempted to obtain other addresses for respondent through an internet search; and the State Bar contacted directory assistance;
- (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 must recommend his disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Randall Kemp Rupp 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 Randall Kemp Rupp, State Bar number 165774, be involuntarily enrolled as an

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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: August _____, 2012

LUCY ARMENDARIZ
Judge of the State Bar Court