

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

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| In the Matter of |) | Case No.: 11-O-12230-PEM |
| |) | |
| KENNETH LEE KIDDY, |) | |
| |) | DECISION AND ORDER OF |
| Member No. 85060, |) | INVOLUNTARY INACTIVE |
| |) | ENROLLMENT |
| A Member of the State Bar. |) | |
| _____ |) | |

Respondent Kenneth Lee Kiddy was charged with two counts of violations of the Rules of Professional Conduct and the Business and Professions Code.¹ He did not 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.²

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 not responding to the notice of disciplinary charges (NDC),

¹ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

² Unless otherwise indicated, all references to rules are to this source.

and the attorney does not 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.³

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 March 6, 1979, and has been a member since then.

Procedural Requirements Have Been Satisfied

On August 19, 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 unclaimed.

In addition, reasonable diligence was also used to notify respondent of this proceeding. The State Bar called directory assistance for the area which includes respondent's official membership records address and asked for all telephone listings for respondent. On September 29, 2011, a call was made to the one telephone number that directory assistance gave for respondent, but it turned out to be a fax machine. On that same day, an email advising respondent that a motion for entry of default would be filed was sent to him at an email address obtained through the State Bar's investigation.

Respondent did not file a response to the NDC. On September 30, 2011, the State Bar filed and properly served a motion for entry of respondent's default. The motion complied with

³ 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).)

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 18, 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 January 17, 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) respondent has had no contact with the State Bar since the entry of default; (2) respondent has two disciplinary matters pending; (3) respondent has three prior records of discipline; and (4) the Client Security Fund (CSF) has not made payments 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 May 9, 2012.

Respondent has been disciplined on three prior occasions.⁴ Pursuant to a Supreme Court order filed on May 26, 2010, respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for two years. In one client matter, respondent did not

⁴ On the court's own motion, the court takes judicial notice of the relevant 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.

perform competently, return unearned fees or inform his client about the status of the case.

Respondent and the State Bar entered into a stipulation as to facts, conclusions of law and the disposition in this matter.

Pursuant to a Supreme Court order filed on July 14, 2011, respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for three years on conditions including actual suspension for 90 days and until he made specified restitution. In four client matters, respondent did not perform competently, return unearned fees or keep clients informed about the status or significant developments of their cases. He also improperly withdrew from employment, disobeyed a court order and knowingly made a false statement. Respondent and the State Bar entered into a stipulation as to facts, conclusions of law and the disposition in this matter.

Pursuant to a Supreme Court order filed on September 23, 2011, respondent's probation was revoked and he was suspended for one year, with credit for the period of inactive enrollment that commenced on July 4, 2011. Discipline was imposed because respondent did not comply with probation conditions imposed in a prior disciplinary matter. He did not participate in this proceeding.

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-O-12230 (C B Merchant Services Matter)

Count One – respondent willfully violated rule 3-700(A)(2) of the RPC (improper withdrawal from employment) by not filing motions to be relieved as counsel and not timely signing and returning substitution of counsel forms.

Count Two – respondent violated section 6068, subdivision (i) (not cooperating or participating in a disciplinary investigation) by not providing a written response to the allegations or otherwise cooperating in the investigation of the C B Merchant Services matter.

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 State Bar served the NDC on respondent at his membership records address by certified mail; and attempted to reach him by telephone and by email;
- (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 did not 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 Kenneth Lee Kiddy 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 rule 9.20 of the California Rules of Court, 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 Kenneth Lee Kiddy, State Bar number 85060, 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: August _____, 2012

PAT McELROY
Judge of the State Bar Court