

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 11-O-17714-LMA
)	
DANIEL JAY WHITE,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 126482,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

In this single-client matter, respondent Daniel Jay White (respondent) was charged with (1) failing to perform legal services with competence; (2) failing to promptly respond to client inquiries; (3) improper withdrawal; (4) failing to comply with all laws; and (5) failing to cooperate in a disciplinary investigation. He failed to appear at the trial of this case and his default was entered. The Office of the 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 appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney’s default is entered for failing to appear at trial 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(E)(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 15, 1986, and has been a member since then.

Procedural Requirements Have Been Satisfied

On January 6, 2012, the State Bar filed and properly served the notice of disciplinary charges (NDC) on respondent at his membership records address by certified mail, return receipt requested. The NDC notified respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. (Rule 5.41.) On February 6, 2012, respondent filed his response to the NDC.

By order filed February 6, 2012, the trial was set to start on May 8, 2012. The order setting the trial date was served on respondent at his membership records address.³ (Rule 5.81(A).)

On May 8, 2012, the State Bar appeared for trial but respondent did not. Finding that all of the requirements of rule 5.81(A) were satisfied, the court issued and properly served an order entering respondent's default that same day. The order notified respondent that if he did not timely move to set aside or vacate his default, the court would recommend his disbarment. The order also placed respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), and he has remained inactive since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].)

³ Respondent's membership records address was also the address provided in his response.

On August 22, 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) respondent has one other disciplinary matter pending in investigation; (3) respondent has no record of prior discipline; and (4) the Client Security Fund has not paid out any claims as a result of respondent's misconduct. Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on September 18, 2012.

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(E)(1)(d).)

Case Number 11-O-17714 (The Falls Matter)

Count One – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to perform any services in his client's matter after filing the summons and complaint.

Count Two - the court does not find respondent culpable of willfully violating section 6068, subdivision (m) (failing to respond to client inquiries), as there is no clear and convincing evidence that respondent received any of his client's inquiry letters.⁴

Count Three – respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by effectively withdrawing from his client's matter without taking reasonable steps to avoid reasonably foreseeable prejudice to the rights of

⁴ The evidence also fails to demonstrate where the client inquiry letters were sent.

the client, including giving due notice to the client and allowing time for employment of other counsel.

Count Four - the court does not find respondent culpable of willfully violating section 6068, subdivision (a) (failing to comply with all laws), as there is no clear and convincing evidence that respondent's non-appearance at a single court hearing constituted a failure to support the Constitution and laws of the United States and of this state.

Count Five - the court does not find respondent culpable of willfully violating section 6068, subdivision (i) (failing to cooperate in a disciplinary investigation), as there is no clear and convincing evidence that respondent actually received any of the investigator's communications.⁵

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) respondent had actual notice of the proceedings prior to the entry of his default, as he filed a response to the NDC and was properly served with notice of the trial date;
- (3) the default was properly entered under rule 5.81; and
- (4) the factual allegations in the NDC deemed admitted by the entry of 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 appear for the trial in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court must recommend his disbarment.

⁵ There is also no evidence indicating that the State Bar investigator contacted respondent at his official membership records telephone number, email, or address.

RECOMMENDATION

Disbarment

The court recommends that respondent Daniel Jay White 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 Daniel Jay White, State Bar number 126482, 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: November _____, 2012

LUCY ARMENDARIZ
Judge of the State Bar Court