

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case Nos.: **13-O-16734-LMA**
) (14-O-01307; 14-O-02910)
MICHAEL CHRISTOPHER SCOVILL,)
) **DECISION AND ORDER OF**
Member No. 277128,) **INVOLUNTARY INACTIVE**
) **ENROLLMENT**
A Member of the State Bar.)

In this matter, respondent Michael Christopher Scovill was charged with eight counts of misconduct stemming from three client matters. Respondent failed to participate either in person or through counsel, 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 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 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(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 June 2, 2011, and has been a member since then.

Procedural Requirements Have Been Satisfied

On September 26, 2014, the State Bar properly filed and served an 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.) It is unclear whether the State Bar received a return receipt card from the U.S. Postal Service.³

In addition, reasonable diligence was also used to notify respondent of this proceeding. The State Bar made several attempts to contact respondent without success. These efforts included faxing him a letter regarding his pending default at his membership records fax number, calling him at his membership records telephone number, sending an email to respondent at his membership records email address, and calling him at an alternative telephone number.

Respondent failed to file a response to the NDC. On November 19, 2014, the State Bar filed and properly served a motion for entry of respondent's default. With exception to the fact that the supporting declaration failed to state whether a signed return receipt for the notice of disciplinary charges was received by the State Bar, the motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the

³ Rule 5.80(B)(1) requires that a motion for entry of default be supported by a declaration stating whether the signed return receipt for the notice of disciplinary charges was received from the member. While the State Bar filed such a declaration, it did not satisfy this requirement.

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 December 3, 2014. 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 90 days to file motion to set aside default].) On March 11, 2015, 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; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made any 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 April 6, 2015.

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).)

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Case No. 13-O-16734 – The Hudspeth Matter

Count One – respondent willfully violated Rules of Professional Conduct, rule 3-110(A) (failure to perform) by failing to promptly draft an amended complaint and failing to appear at an ex parte hearing seeking dismissal of his client’s complaint.

Count Two – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to refund unearned advanced fees.

Case No. 14-O-01307 – The Flores Matter

Count Three – respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to account) by failing to provide his client with an accounting.

Case No. 14-O-02910 – The Heymans Matter

Count Four – the court does not find respondent culpable of willfully violating Rules of Professional Conduct, rule 3-110(A) (failure to perform) as there is no clear and convincing evidence that respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.⁴

Count Five – respondent willfully violated Rules of Professional Conduct, rule 3-700(A)(2) (improper withdrawal from employment) by failing, upon termination, to inform his client that respondent was withdrawing from employment.

Count Six – respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to account) by failing to provide his client with an accounting.

Count Seven – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to refund unearned advanced fees.

⁴ The State Bar merely alleged that respondent performed no legal services of value. This allegation is vague and arbitrary and does not establish, by clear and convincing evidence, that respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.

Count Eight – respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failing to promptly pay client funds) by failing to promptly pay out funds, in the amount of \$306, in respondent’s possession which the client was entitled to receive.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) 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, as the State Bar properly served him with the NDC and made various efforts to locate respondent, including faxing him a letter regarding his pending default at his membership records fax number, calling him at his membership records telephone number, sending an email to respondent at his membership records email address, and calling him at an alternative telephone number;

(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.

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RECOMMENDATIONS

Disbarment

The court recommends that respondent Michael Christopher Scovill be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Restitution

The court also recommends that respondent be ordered to make restitution to the following payees:

- (1) Mildred Hudspeth in the amount of \$1,150 plus 10 percent interest per year from July 9, 2013; and
- (2) Michael Heymans in the total amount of \$1,306 plus 10 percent interest per year from August 15, 2013.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

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.

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ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Michael Christopher Scovill, State Bar number 277128, 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 _____, 2015

LUCY ARMENDARIZ
Judge of the State Bar Court