

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of ) Case No.: **13-O-17495-PEM**  
)  
**JAMES DAVID HOLLISTER,** )  
) **DECISION AND ORDER OF INVOLUNTARY**  
) **INACTIVE ENROLLMENT**  
)  
**Member No. 44244,** )  
)  
A Member of the State Bar. )

Respondent James David Hollister (respondent) is charged with failing to comply with three of the conditions attached to his disciplinary probation. 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.<sup>1</sup>

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 if 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.<sup>2</sup>

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<sup>1</sup> Unless otherwise indicated, all references to rules are to the Rules of Procedure of the State Bar that were in effect from January 1, 2011, through June 30, 2014. A number of the rules of procedure, including the rules governing defaults, were amended effective July 1, 2014. Nonetheless, because respondent's default was entered before July 1, 2014, the operative rules in this matter are those that were in effect before July 1, 2014.

<sup>2</sup> If the court determines that any due process requirements is 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 the practice of law in this state on June 26, 1969, and has been a member of the State Bar of California since that time.

#### **Procedural Requirements Have Been Satisfied**

The State Bar filed the NDC in this proceeding on January 17, 2014. On January 17, 2014, the State Bar also served the NDC on respondent at his membership-records address by certified mail, return receipt requested. 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 undelivered and stamped “Return to Sender [☐] Attempted Not Known [☐] Unable to Forward.”

Thereafter, the State Bar attempted to contact respondent by telephone at his membership-records telephone number on three separate occasions; sent respondent two emails at his membership-records email address; performed internet searches for respondent on two occasions; and sent a courtesy copy of the NDC to respondent at a possible alternative address located during an internet search.

Respondent failed to file a response to the NDC. On April 4, 2014, the State Bar filed and properly served a motion for entry of respondent’s default on respondent at his membership-records address by certified mail, return receipt requested. The State Bar also mailed a courtesy copy of the motion to respondent at a possible alternative address for respondent that the State Bar found through an Internet search by certified mail, return receipt requested.

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The motion 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. The return receipt for the motion for entry of default was not signed.

Respondent did not file a response to the motion, and his default was entered on April 22, 2014. The order entering the default was properly served on respondent at his membership-records address by certified mail, return receipt requested. In the order entering default, the court also ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California under Business and Professions Code section 6007, subdivision (e),<sup>3</sup> effective three days after service of the order. Respondent has continuously been involuntarily enrolled inactive under that order since that time.

Respondent 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 October 27, 2014, the State Bar filed and properly served a petition for disbarment after default on respondent at his membership-records address by certified mail, return receipt requested. The State Bar reported in the petition that (1) it has not had any contact with respondent since his default was entered on April 22, 2014; (2) there are no pending disciplinary matters involving respondent; (3) respondent has two prior records of discipline; and (4) the Client Security Fund has not made any payments due to 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 March 11, 2015.

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<sup>3</sup> All further statutory references are to the Business and Professions Code.

Respondent has two prior records of discipline.<sup>4</sup> In March 1993, respondent was publicly reprimanded with conditions attached for one year in State Bar Court case number 90-O-14553. Respondent participated in that prior matter and stipulated to culpability on one count of failing to keep an agreement in lieu of discipline and on the following nine counts of misconduct involving three separate client matters: three counts of failing to communicate; three counts of failure to perform legal services competently; one count of improper withdrawal from employment; and two counts of failing to promptly refund unearned fees that he collected from his clients in advance.

On September 17, 2009, the Supreme Court filed an order in case number S174838 (State Bar Court case number 05-O-02519, etc.) placing respondent on five years' stayed suspension and four years' probation with conditions, including a minimum actual suspension of three years and until he provides proof of his rehabilitation, fitness to practice, and learning in the law in accordance with former standard 1.2(c)(i) of the Standards for Attorney Sanctions for Professional Misconduct. Respondent participated in that prior matter and stipulated to culpability on the following thirty-one counts of misconduct involving six separate client matters: five counts of failing to communicate; six counts of failure to perform legal services competently; six counts of sharing legal fees with a nonattorney; five counts of aiding the unauthorized practice of law; one count of improperly accepting compensation from someone other than the client; one count of improperly paying compensation for client referrals; one count of failing to obey a court order; two counts of engaging in acts involving moral turpitude; one count of permitting his name as an attorney to be used by nonattorney; one count of improperly soliciting clients; one count of participating in an improper client referral service; one count of failing to cooperate in a State Bar disciplinary investigation.

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<sup>4</sup> The court admits into evidence the certified copies of Respondent's two prior records of discipline that the State Bar filed on March 11, 2015.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of a respondent's default, the factual allegations (but not the charges or conclusions) in the NDC were deemed admitted and no further proof was or 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 13-O-17495 (Failure to Comply With Conditions of Probation)**

Respondent willfully violated section 6068, subdivision (k) (duty to comply with probation conditions) by failing to comply with three of the conditions of the four-year disciplinary probation imposed on him in the Supreme Court's September 17, 2009 order in case number S174838 (State Bar Court case number 05-O-02519, etc.). Specifically, respondent failed to comply with the probation conditions requiring that respondent (1) submit quarterly probation reports; (2) provide proof that he successfully completed the State Bar's Ethics School no later than October 17, 2013; and (3) contact the State Bar's Probation Office within the first 30 days of his probation.

### **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 the NDC on respondent at his membership records address by certified mail, return receipt requested; attempted to contact respondent by telephone; sent respondent two emails; performed two Internet searches for alternative addresses

for respondent; and sent a courtesy copy of the NDC to respondent at a possible alternative address for him located during the Internet searches;

(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 reasonable 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.

## **RECOMMENDATIONS**

### **Disbarment**

The court recommends that respondent James David Hollister, State Bar number 44244, 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 James David Hollister 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 James David Hollister, State Bar number 44244, 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. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: May \_\_\_\_, 2015.

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**PAT McELROY**  
Judge of the State Bar Court