

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 14-N-04092-PEM
)	
WILLIAM ARTHUR MILLER,)	
)	DECISION AND ORDER OF
Member No. 98426,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

Respondent William Arthur Miller (respondent) was charged with willfully violating California Rules of Court, rule 9.20, by willfully disobeying or violating a court order requiring compliance with rule 9.20. 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 90 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 June 1, 1981, and has been a member since then.

Procedural Requirements Have Been Satisfied

On August 18, 2014, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, to his membership records address. A courtesy copy of the NDC was also sent to his official address by regular first class mail. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The return card was returned to the State Bar signed by respondent. The NDC served by first-class mail was not returned by the U.S. Postal Service.

On August 22, 2014, respondent telephoned Senior Trial Counsel Sherrie B. McLetchie and told her that he had received the NDC and that he intended to serve and file a response to the NDC. She warned respondent that if he did not serve a response to the NDC, she would file a motion for entry of default which would result in his disbarment.

To date, respondent has not contacted the State Bar.

Respondent failed to file a response to the NDC. On September 15, 2014, the State Bar filed and properly served a motion for entry of respondent's default. The motion complied with

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).)

all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar senior 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 2, 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. He has remained inactively enrolled since that time.

Respondent 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 January 9, 2015, the State Bar filed and properly served the petition for disbarment on respondent at his official membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) there has been no contact with respondent since his default was entered; (2) there are no other disciplinary matters pending against respondent; (3) respondent has two prior records of discipline; and (4) the Client Security Fund has not made any payments as a result of 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 February 18, 2015.

Respondent has two prior records of discipline. Pursuant to an order of the State Bar Court filed on June 8, 1993, respondent was publicly reprovved with conditions for failing to perform services competently in a single client matter.

Pursuant to a Supreme Court order filed on February 27, 2014, respondent was suspended for one year, the execution of which was stayed, and placed on probation for two years subject to conditions including that he be suspended from the practice of law for six months. Respondent committed acts of moral turpitude by making misrepresentations to the court in one client matter and failed to cooperate with the State Bar. Respondent entered into a stipulation in this prior disciplinary matter.

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(F)(1)(d).)

Disbarment Is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(F) 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 NDC was served on respondent at his membership records address and the State Bar spoke with respondent by telephone after respondent received the NDC;
- (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.

RECOMMENDATION

Disbarment

The court recommends that respondent William Arthur Miller 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 William Arthur Miller, State Bar number 98426, 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: May _____, 2015

PAT McELROY
Judge of the State Bar Court