

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No. 11-N-10893
)	
DAVID LEE CANDAUX,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 65382,)	ENROLLMENT
)	
A Member of the State Bar.)	
_____)	

Respondent David Lee Candaux was charged with failing to comply with California Rule of Court, rule 9.20(c). 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 the Rules of Procedure of the State Bar, rule 5.85.¹

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 180 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.

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).)

FINDINGS AND CONCLUSIONS

Respondent was admitted to the practice of law in California on December 18, 1975, and has been a member of the State Bar since then.

Procedural Requirements Have Been Satisfied

On March 9, 2011, the State Bar filed and properly 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 by the Post Office bearing a stamp that indicated that the mail item was not delivered as it was refused. The State Bar also sent copies of the NDC to another address it had for respondent in its files. This NDC was returned by the Post Office with a stamp indicating that it was not delivered and was unable to be forwarded. The State Bar also telephoned respondent at the number listed in respondent's membership records and left a message asking respondent to return the call. He did not do so. The State Bar also sent an email to respondent at an email address it had for respondent.³ Respondent did not reply to the email. In addition, the State Bar located other potential addresses and telephone numbers for respondent after conducting an extensive search. Copies of the NDC were sent to respondent at these other addresses, and telephone calls were made to the other telephone numbers. These additional efforts to contact respondent were also not unsuccessful.

Respondent failed to file a response to the NDC. On April 20, 2011, the State Bar filed a motion for entry of his default. The motion complied with all the requirements for a default,

³ Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).) Respondent does not have an email address listed in his membership records.

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 or vacate his default, the court would recommend his disbarment. Respondent did not file a response to the motion and his default was entered on May 6, 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), and he has remained inactively enrolled since then.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days after order entering default is served to file motion to set aside default].) On December 22, 2011, 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 does not have any other disciplinary investigations pending against him but does have one other case that has been filed in the State Bar Court;⁴ (3) respondent has a 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 or moved to set aside or vacate the default. This case was submitted for decision on January 18, 2012.

Respondent has been disciplined on three prior occasions. On August 8, 1984, he was suspended for one year, execution of which was stayed, and he was placed on probation for one year on conditions. The misconduct underlying this discipline involved respondent's failure to perform services competently in a one client matter.

⁴ Respondent's default was also entered in this other case. A decision has not been filed in the case as of yet.

On August 27, 2003, respondent was publicly reprovved and ordered to comply with conditions attached to the reprovval. The misconduct underlying this discipline involved respondent's failure to perform services competently in a one client matter.

On November 9, 2010, respondent was suspended for two years, execution of which was stayed, and he was placed on probation for two years on conditions, including actual suspension for 90 days. Respondent was also ordered to comply with California Rules of Court, rule 9.20. The misconduct underlying this discipline involved two client matters and included respondent's failure to perform services competently, failure to communicate with clients, improper withdrawal from a client's case and failure to cooperate with the State in its investigation of the charges.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a 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.) In this case, the admitted acts show that respondent is culpable as charged of violating California Rule of Court, rule 9.20(c) (duties of disbarred, resigned or suspended attorneys) by failing to file proof of compliance with the rule as ordered by the Supreme Court in the November 2010 discipline case.

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 NDC was served on respondent at his membership records address; the State Bar attempted to contact him at the telephone number listed in his membership records, at an email

address contained in its files, and at other potential addresses and telephone numbers it had found after conducting a search for alternative contact information;

(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 must recommend his disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent David Lee Candaux 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, and that the costs be 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 David Lee Candaux, State Bar Number 65382, 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: February _____, 2012

DONALD F. MILES
Judge of the State Bar Court