

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 11-N-19132-RAP
)	
ZHEN XIANG WANG,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 229114,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Zhen Xiang Wang (respondent) was charged with willfully violating California Rules of Court, rule 9.20 by willfully disobeying or violating a court order requiring compliance with California Rules of Court, 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) 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

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

On April 29, 2013, the State Bar filed and served an Amended NDC on respondent in case No. 11-N-19132 by United Parcel Service (UPS) overnight delivery with tracking to his membership records address in China. The Amended NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Thereafter, the State Bar (1) attempted to reach respondent by telephone at his membership records telephone number; (2) sent a letter by certified U. S. mail to five other possible addresses for respondent advising respondent that charges had been filed; that his response was overdue; and that a motion for entry of default would be filed if he did not respond by June 8, 2013; (3) called two other potential telephone listings for respondent; and (4) sent an email to respondent's membership records email address advising respondent of the charges filed; that his response was overdue; and that it was the assigned deputy trial counsel's intention to file a motion for entry of default.³

Respondent failed to file a response to the NDC. On June 12, 2013, the State Bar filed and served a motion for entry of default on respondent by certified mail, return receipt requested, and by UPS with tracking to his membership records address. 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. Respondent did not file a

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).)

response to the motion, and his default was entered on July 19, 2013.⁴ The order entering the default was served on respondent at his membership records address by UPS expedited with tracking. 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 also 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 February 6, 2014, the State Bar filed and served the petition for disbarment on respondent by certified mail, return receipt requested, to his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) respondent has not contacted the State Bar since July 19, 2013, the date the order entering his default was served;⁵ (2) there are no other disciplinary matters pending against respondent; (3) respondent has a prior record of discipline; and (4) the Client Security Fund has paid out a claim as a result of respondent's prior misconduct. 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 26, 2014.

Respondent has a prior record of discipline.⁶ Pursuant to a Supreme Court order filed on August 31, 2011, respondent was suspended for 18 months, the execution of which was stayed, subject to conditions including that he be suspended for a minimum of 90 days and until the court grants a motion to terminate his suspension. In this prior disciplinary matter, in which respondent's default was also entered, the court found respondent culpable of (1) intentionally

⁴ Respondent's default had previously been entered on May 16, 2012, but was vacated on March 31, 2013, as the original NDC filed on February 3, 2012, had not been served on respondent at his correct membership records address.

⁵ This is also the date that respondent's default was entered.

⁶ The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence and directs the clerk to include copies in the record of this case.

and recklessly failing to perform with competence; (2) moral turpitude for misrepresentation; and (3) failing to cooperate and participate in a disciplinary investigation pending against him (two matters).

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.) As set forth below in greater detail, the factual allegations in the Amended 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 11-N-19132 (Violation of Rule 9.20)

Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys) by failing to file a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), thereby failing to timely comply with the provisions of the August 31, 2011, Supreme Court order requiring compliance with California Rules of Court, rule 9.20.

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 Amended NDC was properly served on respondent;
- (2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the State Bar (a) filed and served the NDC on respondent by UPS overnight delivery with tracking to his membership records address; (b) attempted to reach respondent by telephone at his membership records telephone number and at two other potential

telephone listings; (c) sent a letter by certified U. S. mail to five other possible addresses for respondent; and (d) sent an email to respondent's membership records email address;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the Amended 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 Zhen Xiang Wang 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.

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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 Zhen Xiang Wang, State Bar number 229114, 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 24, 2014

RICHARD A. PLATEL
Judge of the State Bar Court