

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No.: 13-N-15294-DFM
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CHRIS M. RUSCH,) DECISION AND ORDER OF
) INVOLUNTARY INACTIVE
Member No. 210913,) ENROLLMENT
)
)
A Member of the State Bar.)

Respondent Chris M. Rusch (Respondent) was charged with failing to comply with an order requiring him to file a declaration of compliance with California Rules of Court, rule 9.20, with the clerk of the State Bar Court by July 31, 2013, as required by the Review Department of the State Bar Court.¹ 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.²

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,

¹ This matter was originally assigned to the Honorable Richard A. Honn. However, effective May 9, 2014, this matter was reassigned to the undersigned judge.

² Unless otherwise indicated, all references to rules are to this source. The Rules of Procedure of the State Bar regarding defaults, rules 5.80 through 5.86, were substantively revised effective July 1, 2014. However, as the default in this case was entered prior to July 1, 2014, the court, in the interests of justice, will apply in this matter former rules 5.80 through 5.86 of the Rules of Procedure of the State Bar which were in effect from January 1, 2011, through June 30, 2014.

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.³

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 October 16, 2013, the State Bar filed and properly served on Respondent by certified mail, return receipt requested, the NDC in this matter. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The State Bar received a signed return card on October 22, 2013, but the signature was illegible.

Thereafter, the State Bar (1) attempted to reach Respondent by telephone at his membership records telephone number; (2) called directory assistance for the area which includes Respondent's membership records address; and (3) checked Parker's directory.

Respondent failed to file a response to the NDC. On December 17, 2013, the State Bar filed and served a motion for entry of default on Respondent by certified mail, return receipt requested, 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 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

³ 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).)

would recommend his disbarment. Respondent did not file a response to the motion,⁴ and his default was entered on January 7, 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.⁵

On December 17, 2013, the assigned senior trial counsel, Anthony Garcia (STC Garcia), sent an email to the email address listed on Respondent's membership record,⁶ advising Respondent that a default motion had been filed in the instant case and asking him to contact the State Bar Court or the assigned senior trial counsel. That same day, STC Garcia received an email from Respondent indicating his email address had changed and asking that the message be resent to another specified email address.

STC Garcia sent an email on December 17, 2013, to the new specified email address, advising Respondent that he had filed a default motion in the instant case and asking him to contact the State Bar Court or STC Garcia.

STC Garcia received an email from Respondent on December 17, 2013, stating that he was unfamiliar with the present matter and that he assumed it was related to his Arizona felony conviction. Respondent also stated that he had closed his practice and expected to be disbarred.

On December 19, 2013, STC Garcia sent an email to Respondent attaching the NDC in this matter, the default motion, and a link to the State Bar Rules of Procedure on the public website.

⁴ According to the United States Postal Service website, the motion was delivered in West Hollywood, California on December 18, 2013.

⁵ The return receipt for the order indicates that it was received by Rob Amoyaw, and the date of delivery was January 10, 2014.

⁶ 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 sent an email to STC Garcia on December 19, 2013, thanking STC Garcia for reaching out to him. STC Garcia responded and enclosed a printout of Respondent's membership records page and reminding Respondent that it is his obligation to update his membership record with his current contact information.⁷

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 September 16, 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 STC Garcia since December 19, 2013;⁸ (2) there is another disciplinary matter pending against Respondent; (3) Respondent does not have a prior record of discipline; and (4) the Client Security Fund has not paid out any claim 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 October 20, 2014.

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 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).)

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⁷ STC Garcia learned that the District Court sentenced Respondent to 10 months in prison on March 18, 2014.

⁸ Therefore, STC Garcia has not had any contact with Respondent since his default was entered on January 7, 2014.

Case Number 13-N-15294 (Failure to Obey Court Order)

Respondent willfully violated Business and Professions Code section 6103 (failure to obey a court order) by failing to comply with the May 24, 2013, order of the Review Department of the State Bar Court requiring Respondent to file a declaration of compliance with California Rules of Court, rule 9.20, with the clerk of the State Bar Court by July 31, 2013.

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;

(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 certified mail, return receipt requested, to his membership records address; (b) attempted to reach Respondent by telephone; (c) called directory assistance; and (d) checked Parker's directory. Respondent also had actual notice of the proceeding as STC Garcia sent three emails to Respondent, and Respondent replied to two of the emails;

(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 and actual 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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RECOMMENDATION

Disbarment

The court recommends that Respondent **Chris M. Rusch**, State Bar number 210913, 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 **Chris M. Rusch**, State Bar number 210913, 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: January _____, 2015

DONALD F. MILES
Judge of the State Bar Court