

PUBLIC MATTER

FILED

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STATE BAR COURT
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LOS ANGELES

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)
DREW ALLAN CICCONI,)
A Member of the State Bar, No. 83202.)
_____)
Case No. 16-O-16321-DFM
DECISION AND ORDER OF
INVOLUNTARY INACTIVE
ENROLLMENT

Respondent Drew Allan Cicconi (Respondent) is charged with failing to comply with probations conditions attached to the disciplinary probation imposed on him under Supreme Court order S219997 (State Bar Court case No. 12-O-15317). Respondent failed to participate, either in person or through counsel, in this proceeding and his default was entered. Thereafter, the Office of Chief Trial Counsel of the State Bar of California (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 90 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 requirement 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(F)(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 California on November 29, 1978, and has been a member since that time.

Procedural Requirements Have Been Satisfied

On January 24, 2017, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, at his membership records address. 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 U.S. Postal Service bearing the stamp "Return to Sender, Not Deliverable as Addressed, Unable to Forward, Unclaimed."

On February 28, 2017, numerous steps were taken to notify Respondent of this proceeding. The State Bar mailed by regular first class mail a courtesy copy of the NDC and a Notice of Intent to File a Motion for Default to Respondent at his membership records address. This letter was also returned by the U. S. Postal Service as "not deliverable as addressed and could not be forwarded."

The assigned deputy trial counsel (DTC) also attempted to reach Respondent at his official membership telephone number on February 28, 2017. The DTC left a voicemail message with his telephone number, asking that Respondent return his call.

A State Bar investigator conducted a LexisNexis search for Respondent. That search yielded an alternative mailing and email address for Respondent. On February 28, 2017, the DTC mailed a courtesy copy of the NDC and Notice of Intent to File a Motion for Default to

Respondent at the alternative address by regular first class mail. That letter was not returned to the State Bar. The DTC also emailed Respondent at the alternative email address; but Respondent did not reply to the email.

On March 9, 2017 and March 10, 2017, the DTC again attempted to reach Respondent by calling Respondent's official membership telephone number and leaving voicemail messages, which included the DTC's phone number and a request that Respondent contact her. Respondent did not respond to the messages left by the DTC.

And, finally on March 10th, the DTC emailed Respondent at his membership records email address and at the alternative email address. Attached to each of those emails was a courtesy copy of the NDC. Respondent, however, did not reply to either email.

Despite the State Bar's many efforts, Respondent failed to file a response to the NDC.

On March 10, 2017, the State Bar filed and properly served a motion for entry of default on Respondent at his membership records address by certified mail, return receipt requested. The motion complied with the requirements for a default, including a supporting declaration of reasonable diligence by the DTC. (Rule 5.80.) The motion 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 March 29, 2017. 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),³ effective three days after service of the order, and he has remained inactively enrolled since that time. The order entering the default and enrolling Respondent inactive was served on Respondent: (1) at his membership records address by certified mail, return receipt

³ Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

requested, and (2) at the alternative address, which was found through the State Bar's LexisNexis search, by first class mail, postage fully prepaid.

Respondent has not sought 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 July 20, 2017, the State Bar filed and properly served a petition for disbarment on Respondent at his official membership records address and properly served a courtesy copy. As required by rule 5.85(A), the State Bar reported in the petition that (1) the State Bar has not received any contact from Respondent since his default was entered; (2) Respondent has no other disciplinary matters pending against him; (3) Respondent has two records of discipline; and (4) the Client Security Fund has not made any payments as a result of Respondent's misconduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate his default.

The case was submitted for decision on August 15, 2017.

Prior Records of Discipline

Respondent has two prior records of discipline.

In his first prior discipline, pursuant to Supreme Court order S200188 (State Bar Court case Nos. 10-O-08838 (11-O-12292; 11-O-13904; 11-O-14033), effective June 22, 2012, Respondent was suspended from the practice of law for one year; the execution of which was stayed, and placed on probation for two years subject to probation conditions, including that he be actually suspended from the practice of law for the first 30 days of probation. Respondent stipulated that he engaged in misconduct when he willfully violated rule 4-100(A) of the California Rules of Professional Conduct by depositing or commingling his own personal funds into a bank account labeled, "Trust Account," "Client Funds Account," or words of similar import and engaged in further misconduct when he willfully violated section 6068(i) by failing to cooperate with State Bar investigations.

In his second prior discipline, pursuant to Supreme Court order S219997 (State Bar Court case Nos. 12-O-15317 (13-O-12854), Respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for two years subject to probation conditions, including that he be actually suspended from the practice of law for the first 60 days of probation. In one matter, Respondent stipulated that, by appearing in court and filing a discovery motion on behalf of a client when Respondent was suspended from the practice of law, he had held himself out as entitled to practice law and had actually practiced law when he was not an active member of the State Bar of California. In the second client matter, Respondent stipulated that, by appearing for an arbitration hearing on behalf of a client and providing legal advice and counsel to that client when Respondent was suspended from the practice of law, Respondent had held himself out as entitled to practice law and had actually practiced law when he was not an active member of the State Bar of California. In both matters, Respondent stipulated that his conduct willfully violated Business and Professions Code, sections 6125, 6126, and 6068(a).

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(2).) 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).)

Case Number 16-O-16321 (Violation of Disciplinary Probation)

Count One - Respondent willfully violated Business and Professions Code section 6068, subdivision (k) (failure to comply with the conditions of probation), by failing to comply with the probation conditions attached to the disciplinary probation imposed on him

by the Supreme Court in its order S219997. Specifically, Respondent failed to: (1) timely submit three quarterly reports by their due dates of April 10, July 10, and October 10, 2015, and instead submitted the aforementioned quarterly reports late; and (2) submit the five quarterly reports having due dates of January 10, April 10, July 10, October 10, and October 16, 2016, respectively.

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;
- (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.

RECOMMENDATIONS

Disbarment

The court recommends that respondent **Drew Allan Cicconi**, State Bar number 83202, 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 **Drew Allan Cicconi**, State Bar number 83202, 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: September 6, 2017


DONALD F. MILES
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on September 6, 2017, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DREW ALLAN CICCONI
CICCONI LAW FIRM
PO BOX 366
TOPANGA, CA 90290

DREW ALLAN CICCONI
19730 OBSERVATION DRIVE
TOPANGA, CA 90290

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

PATRICE N. VALLIER-GLASS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 6, 2017.



Mazie Yip
Case Administrator
State Bar Court