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STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of	)	Case No. 17-H-06214-LMA
	)	
GREGORY P. ALLEN,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 98002.	)	ENROLLMENT
_____	)	

INTRODUCTION

Respondent Gregory P. Allen (Respondent) was charged with failing to comply with conditions attached to a public reproof in willful violation of rule 1-110 of the Rules of Professional Conduct. He failed to participate either in person or through counsel, and his default was entered. The Office of Chief Trial Counsel (OCTC) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup>

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.<sup>2</sup>

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

<sup>2</sup> 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).)

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**

### **Jurisdiction**

Respondent was admitted to practice law in this state on May 29, 1981, and has been a member since then.

### **Procedural Requirements Have Been Satisfied**

On March 5, 2018, OCTC filed and properly served the NDC on Respondent by certified mail, return receipt requested, and by U.S. first-class mail to his membership records address.<sup>3</sup> The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Although Respondent was served by first-class mail, postage fully prepaid, with notice of an April 2, 2018, initial in-person status conference, Respondent failed to appear for the status conference. The court filed a status conference order on April 3, 2018, ordering OCTC to file a motion for the entry of Respondent's default.

Thereafter, DTC Murphy attempted to reach Respondent by telephone using his membership records telephone number, as well as his private telephone number listed in membership records. DTC Murphy left messages for Respondent. That same day, Respondent returned DTC Murphy's call and spoke with her. Respondent informed DTC Murphy that given his personal difficulties and poor health, he had not gone to his law firm post office box to collect his mail. Respondent was not aware of the NDC or of his required April 2, 2018 court

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<sup>3</sup> According to the declaration of Deputy Trial Counsel Melissa G. Murphy (DTC Murphy), which accompanied the State Bar's motion for the entry of Respondent's default, the NDC sent by first-class mail was not returned. However, the NDC sent by certified mail, return receipt requested, was returned as unclaimed and unable to be forwarded.

appearance. However, Respondent informed DTC Murphy that he had not complied with the terms of his reproof due to his health and personal difficulties and indicated that he wanted to enter into a stipulation for the violation of his reproof. DTC Murphy informed Respondent that based on the court's order that she file a motion for entry of Respondent's default by April 12, 2017, she would be filing that motion, but she would explain to the court that Respondent wanted to resolve the matter through a stipulation. DTC Murphy also informed Respondent that he needed to collect his law office mail and file a response to the NDC. Respondent advised DTC Murphy that he would do so. As of April 10, 2018, Respondent and OCTC were negotiating a stipulation.

Respondent, however, failed to file a response to the NDC. On April 10, 2018, OCTC filed and properly served on Respondent by certified mail, return receipt requested, a motion for entry of Respondent's default at his membership records address and to another address on Patrick Court in Arcata, CA. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by OCTC's 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 response to the motion, and his default was entered on April 30, 2018. The order entering the default was served on Respondent at his membership records address by certified mail, return receipt requested.<sup>4</sup> 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, and he has remained inactively enrolled since that time.

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<sup>4</sup> The order was returned to the State Bar Court with a sticker which read, in part, "VACANT" and reflecting it was unable to be forwarded.

On May 1, 2018, DTC Murphy emailed Respondent a copy of the court's order entering Respondent's default and enrolling him inactive. A copy was also mailed to Respondent's membership records address.

DTC Murphy spoke to Respondent by telephone on May 24, 2018, and urged him to file a response to the NDC and a motion to set aside his default. Thereafter, on that same day, DTC Murphy emailed Respondent a copy of the NDC, OCTC's motion for the entry of Respondent's default, and the court's entry of default. DTC Murphy again urged Respondent to file a response to the NDC and a motion to set aside his default.

On June 11, 2018, Respondent filed a motion for relief from default, accompanied by a proposed answer to the NDC. (Rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].) The court set an in-person status conference on July 2, 2018, to hear Respondent's motion. Respondent was sent proper notice of the status conference on June 19, 2018, by first-class mail, postage fully prepaid.

On June 20, 2018, DTC Murphy notified Respondent by email of the court's order for his personal appearance and attached the order. She also sent a copy of the court's order to his home address by certified mail. Respondent received the order for his personal appearance via certified mail and signed for its receipt on June 22, 2018.

However, Respondent did not appear for the July 2, 2018 status conference, and the court denied Respondent's motion for relief from default on July 2, 2018. That same day, the court filed an order reflecting its ruling on Respondent's motion. The order was properly served on Respondent by first-class mail, postage fully prepaid, on July 2, 2018.

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On July 3, 2018, DTC Murphy emailed Respondent a copy of the court's order denying his motion to set aside his default. She also informed Respondent "that if he did not remove his default,"<sup>5</sup> OCTC was required to file a disbarment petition.

On August 16, 2018, OCTC filed the petition for disbarment. OCTC set forth in the petition the contact DTC Murphy had with Respondent since his default was entered; that Respondent has a prior record of discipline; and, that as a result of Respondent's conduct, the Client Security Fund has not paid out any claims. Respondent did not respond to the petition for disbarment or file a further motion to set aside or vacate the default. The case was submitted for decision on September 11, 2018.

### **Prior Record of Discipline**

Respondent has a prior record of discipline.<sup>6</sup> On September 2, 2016, the State Bar Court filed an order imposing a public reproof on Respondent with conditions attached to the reproof for one year. Respondent stipulated in that matter that he willfully violated Business and Professions Code section 6068, subdivision (m), by failing to keep his client reasonably informed of a significant development in her case and willfully violated Business and Professions Code section 6068, subdivision (i), by failing to cooperate in a disciplinary investigation pending against him. In aggravation, Respondent engaged in multiple acts of misconduct. In mitigation, Respondent had no prior record of discipline and entered into a pretrial stipulation in the 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

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<sup>5</sup> Declaration of DTC Murphy attached to OCTC's petition for Respondent's disbarment.

<sup>6</sup> The court admits into evidence the certified copies of Respondent's prior record of discipline attached to the August 16, 2018 petition for disbarment.

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 No. 17-H-06214 (Reproval Conditions Matter)**

Count One – Respondent willfully violated rule 1-110 of the Rules of Professional Conduct by failing to comply with conditions attached to a public reproval administered by the State Bar in case No. 15-O-14552 by failing, by September 23, 2017, to complete 10 hours of participatory continuing legal education classes approved by the Office of Probation, with at least four of the hours addressing attorney-client relations or law office management, and by failing to timely submit a final report to the Office of Probation by the September 23, 2017 due date.

**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.<sup>7</sup> 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, and Respondent had actual notice of the proceedings;
- (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.

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<sup>7</sup> Before granting OCTC's disbarment petition, the court considered what, if any, relief was appropriate under the default rules. The court has determined that no relief was appropriate; that the disbarment petition should be granted; and that Respondent's disbarment should be recommended in this matter as the appropriate 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.

### RECOMMENDATION

#### Discipline - Disbarment

It is recommended that Gregory P. Allen, State Bar Number 98002, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

#### California Rules of Court, Rule 9.20

It is further recommended 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 imposing discipline in this matter.<sup>8</sup> Failure to do so may result in disbarment or suspension.

#### Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs

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<sup>8</sup> For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

### **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Gregory P. Allen, State Bar number 98002, 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: October 5, 2018

  
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LUCY ARMENDARIZ  
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 Court Specialist 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 San Francisco, on October 5, 2018, 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:

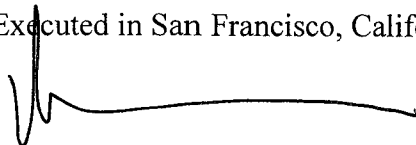
by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

GREGORY P. ALLEN  
LAW OFFICE OF GREGORY P. ALLEN  
PO BOX 785  
ARCATA, CA 95518

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

Melissa G. Murphy, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on October 5, 2018.



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Vincent Au  
Court Specialist  
State Bar Court