

PUBLIC MATTER

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STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No. 17-N-03660-PEM
)	
DAVID CURTIS HOLLINGSWORTH,)	DECISION AND ORDER OF INVOLUNTARY
)	INACTIVE ENROLLMENT
<u>A Member of the State Bar, No. 203887.</u>)	

INTRODUCTION

In this rule 9.20 proceeding, respondent DAVID CURTIS HOLLINGSWORTH is charged with failing to file a California Rules of Court, rule 9.20(c) compliance declaration in accordance with the Supreme Court's March 16, 2017 order in *In re David Curtis Hollingsworth on Discipline*, case number S221836 (State Bar Court case number 16-PM-16982). Respondent failed to participate in this proceeding either in person or through counsel, and his default was entered. Thereafter, the State Bar of California's Office of 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

¹ Except where otherwise indicated, all further references to rules are to the Rules of Procedure of the State Bar.



(NDC) and if the attorney fails to have the default set aside or vacated within 90 days, the State Bar will file a petition requesting that the State Bar Court 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.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on December 6, 1999, and has been a member of the State Bar of California since that time.

Procedural Requirements Have Been Satisfied

On August 28, 2017, 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.) On August 28, 2017, the State Bar also sent a courtesy copy of the NDC to respondent at his membership-records address by first-class mail, regular delivery. The United States Postal Service (Postal Service) did not return, to the State Bar as undeliverable or otherwise, either the service copy of the NDC or the courtesy copy of the NDC.

On September 28, 2017, in an attempt to ensure that respondent has actual knowledge of this proceeding, the State Bar attempted to reach respondent by telephoning respondent at his membership-records telephone number and leaving a voicemail message for him and by sending an email to respondent at his membership-records email address.³ And, on September 29, 2017, the State Bar ran both a LexisNexis public records search and a google.com search for

² If the court determines that any due process requirements is not satisfied, including adequate notice to the attorney, it will deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(F)(2).)

³ All attorneys are required to maintain a current email address on record with the State Bar of California to facilitate communications with it. (Cal. Rules of Court, rule 9.7(a)(2).)

respondent and obtained two possible additional telephone numbers for respondent and two possible additional email addresses for respondent. That same day, the State Bar also attempted to contact respondent by calling the two additional telephone numbers and by sending an email to respondent at each of the two additional email addresses.

Respondent failed to file a response to the NDC. On September 29, 2017, the State Bar filed a motion for entry of respondent's default and properly served the motion on respondent at his membership-records address by certified mail, return receipt requested. At the same time, the State Bar also sent a courtesy copy of the motion for entry of default to respondent at his membership-records address by first-class mail, regular delivery. The Postal Service did not return, to the State Bar as undeliverable or otherwise, the service copy of the motion for entry of default.⁴ The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence detailing the additional steps the State Bar took in its attempt to provide respondent with actual notice of this proceeding. (Rule 5.80.) The motion for default 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 for entry of default or to the NDC, and his default was properly entered on October 17, 2017. The order entering respondent's default was properly served on respondent at his membership-records address by certified mail, return receipt requested on October 17, 2017. The Postal Service thereafter returned the order to the court marked "Return to Sender [¶] Unclaimed [¶] Unable to Forward." The default order notified respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. In its default order, the court also ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California in accordance with

⁴ The record does not reflect whether the Postal Service returned, to the State Bar, the courtesy copy of the motion for entry of default.

Business and Professions Code section 6007, subdivision (e). In accordance with the default order, respondent was involuntarily enrolled inactive on October 20, 2017, and has been involuntarily enrolled inactive since that time.

Respondent did not seek to have his default vacated or set aside. (Rule 5.83(B)&(C)(1) [attorney has 90 days to file motion to set aside default].) On February 27, 2018, the State Bar filed a petition for disbarment after default and served it on respondent at his membership-records address by certified mail, return receipt requested. As required by rule 5.85(A), the State Bar reported in the petition for disbarment that (1) respondent has failed to contact the State Bar since January 2016; (2) respondent has no other pending disciplinary investigations; (3) respondent has two prior records of discipline; and (4) the Client Security Fund has not paid out any claims resulting from respondent's conduct.

Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The court took the petition for disbarment under submission for decision on March 28, 2018.

Prior Records of Discipline

Respondent has the following two prior records of discipline.

Hollingsworth I

On November 20, 2014, the Supreme Court filed an order in case number S221836 (State Bar Court case number 12-O-10185), styled *In re David Curtis Hollingsworth on Discipline (Hollingsworth I)*, placing respondent on one year's stayed suspension and two years' probation (but no actual suspension). In *Hollingsworth I*, respondent stipulated to violating: (1) State Bar Rules of Professional Conduct, rule 4-100(A) [attorney must deposit client funds into a trust account) by failing to deposit two checks totaling \$1,900 into his client trust account (CTA); and (2) Business and Professions Code section 6068, subdivision (1) (attorney must comply with

agreement in lieu of discipline) by failing to timely submit three quarterly reports, failing to submit a final report, and failing to complete Ethics School and Client Trust Accounting School. In that proceeding, Respondent also stipulated to aggravation based on multiple acts of misconduct. Finally, respondent was given mitigation for not having a prior record of discipline in 11 years of practice, stipulating to his misconduct, his good character, and pro bono activities.

Hollingsworth II

On March 16, 2017, the Supreme Court filed an order in case number S221836 (State Bar Court case number 16-PM-16982), styled *In re David Curtis Hollingsworth on Discipline*, revoking the two-year disciplinary probation, placing respondent on one year's actual suspension, and ordering respondent to comply with California Rules of Court, rule 9.20. The Supreme Court imposed that discipline on respondent in accordance with a decision of the State Bar Court finding respondent culpable of violating one of the conditions of the two-year disciplinary probation, which was previously imposed on him in the Supreme Court's November 20, 2014 order. Specifically, respondent submitted two quarterly reports late and failed to submit three additional quarterly reports. In aggravation, respondent had one prior record of discipline and committed multiple acts of misconduct. No mitigation was found.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a respondent's default, the factual allegations (but not the conclusion of law or the charges) in the NDC were deemed admitted and no further proof was required to establish the truth of those facts. (Rule 5.82(2).) As set forth below in greater detail, the factual allegations in the NDC support the conclusions that respondent is culpable as charged and that he, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

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Case Number 17-N-03660 (Rule 9.20 Proceeding)

Count One – respondent willfully failed to comply with California Rules of Court, rule 9.20(c) because he failed to file, with the Clerk of the State Bar Court, a California Rules of Court, rule 9.20(c) compliance declaration in accordance with the Supreme Court’s March 16, 2017 order in case number S221836 (State Bar Court case number 16-PM-16982).

Disbarment is Recommended

In light of the forgoing, the court finds 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) respondent’s 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 David Curtis Hollingsworth, State Bar number 203887, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

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California Rules of Court, Rule 9.20

The court also recommends that respondent be again 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.

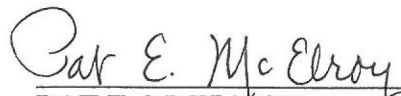
Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 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 Curtis Hollingsworth, State Bar number 203887, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after service of this decision and order by mail (Rules Proc. of State Bar, rule 5.111(D)).

Dated: April 23, 2018.



PAT E. McELROY
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 April 23, 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:

DAVID C. HOLLINGSWORTH
LAW OFFICE OF DAVID C.
HOLLINGSWORTH
4617 N WEST AVE
FRESNO, CA 93705

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

Duncan C. Carling, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 23, 2018.



Laretta Cramer
Court Specialist
State Bar Court