



PUBLIC MATTER

FILED

MAY 24 2019

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES**

In the Matter of)	Case No. 17-N-07478-YDR
)	
DANE PAUL MILLER,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
State Bar No. 226332.)	ENROLLMENT
)	

Respondent Dane Paul Miller (Respondent) was charged with willfully violating California Rules of Court, rule 9.20, by failing to file a declaration of compliance with that rule in conformity with the requirements of rule 9.20(c), as required by an order of the Supreme Court. He failed to participate, either in person or through counsel, and his default was entered. The Office of Chief Trial Counsel of the State Bar of California (OCTC) 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 Unless otherwise indicated, all references to rules are to this source.

(NDC) and the attorney fails to have the default set aside or vacated within 90 days, OCTC will file a petition requesting the court to 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 California on September 2, 2003, and has been a licensed attorney since then.

Procedural Requirements Have Been Satisfied

On September 17, 2018, OCTC properly filed and served a notice of disciplinary charges (NDC) on Respondent by certified mail, return receipt requested, to his official State Bar record address. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) On September 24, 2018, OCTC received the return receipt unsigned and undated.

On October 18, 19, and 22, 2018, OCTC made several attempts to reach Respondent by telephone and by email, but was unsuccessful. OCTC was unable to leave a message at Respondent's official State Bar record telephone number because a voice mailbox was not set up. OCTC tried to telephone Respondent at two other alternate telephone numbers and send emails to two alternate email addresses, based on a LexisNexis search. One was a wrong telephone number and the other went unanswered. And the emails were returned as undeliverable.

On October 22, 2018, courtesy copy of the NDC and a letter, informing him that a motion for entry of default would be filed if he did not file a response to the NDC, were also sent to

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(F)(2).)

Respondent by regular first class mail to his official State Bar record address and to an alternate address and by email at his official State Bar record email address. They were not returned as undeliverable. OCTC did not receive any response from Respondent.

Because Respondent was recently on disciplinary probation, OCTC contacted his assigned probation deputy for any other alternate address or phone number and was advised of none.

Respondent failed to file a response to the NDC. On November 13, 2018, OCTC properly filed and served a motion for entry of Respondent's default by certified mail, return receipt requested. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by OCTC deputy trial counsel declaring the additional steps taken to provide notice to Respondent. (Rule 5.80.)³ The motion also notified Respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. The mailing was not returned as undeliverable.

Respondent did not file a response to the motion, and his default was entered on December 3, 2018. The order entering the default was served on Respondent at his official State Bar record address by certified mail, return receipt requested. The court also ordered Respondent's involuntary inactive enrollment as a licensed attorney 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 did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].)

³ Former rule 5.80 of the Rules of Procedure of the State Bar is applicable since the motion for entry of default was filed in November 2018, before rule 5.80 was amended, effective January 1 and January 29, 2019.

On March 25, 2019, OCTC properly filed and served the petition for disbarment on Respondent at his official State Bar record address. As required by rule 5.85(A), OCTC reported in the petition that: (1) there has been no contact with Respondent since his default was entered; (2) there are no disciplinary charges or investigations pending against Respondent; (3) Respondent has two records of prior discipline; and (4) the Client Security Fund has not paid any claims as a result of Respondent's misconduct.

Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on May 2, 2019.

Prior Record of Discipline

Respondent has two prior records of discipline.

On January 28, 2016, Respondent was suspended for one year, the execution of which was stayed, and placed on probation for two years, with conditions of probation, including 90 days' actual suspension. Respondent's stipulated misconduct in one client matter involved failure to maintain client funds, failure to render an accounting, failure to promptly pay client funds, and commingling.

On October 1, 2017, in his second prior record of discipline, Respondent's probation was revoked and was suspended for a minimum of one year and until he complies with certain conditions, for his failure to comply with his probation conditions.

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 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 17-N-07478 (Rule 9.20 Matter)

Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys), by failing to file proof of compliance as required by rule 9.20(c), as ordered by the Supreme Court in its September 1, 2017 order.

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 his disbarment.

RECOMMENDATIONS

Disbarment

It is recommended that **Dane Paul Miller**, State Bar number 226332, 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 in this proceeding. ⁴

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 section 6086.10, subdivision (c), costs assessed against a licensed attorney of the State Bar 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 **Dane Paul Miller**, State Bar number 226332, be involuntarily enrolled as an inactive licensed attorney of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: May 23, 2019



Yvette D. Roland
Judge of the State Bar Court

⁴ 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).)

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 Los Angeles, on May 24, 2019, 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:

DANE P. MILLER
688 S SANTA FE AVE
APT 108
LOS ANGELES, CA 90021 - 1332

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

JAIME M. VOGEL, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 24, 2019.



Mazie Yip
Court Specialist
State Bar Court