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OCT 13 2017

STATE BAR COURT  
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LOS ANGELES

# PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos. 17-O-00400-DFM
	)	17-N-00761 (Cons.)
JOSEPH DULLES ALLEN,	)	
	)	DECISION AND ORDER OF
A Member of the State Bar, No. 48922.	)	INVOLUNTARY INACTIVE
_____	)	ENROLLMENT

In this matter, respondent Joseph Dulles Allen (Respondent) was charged with two counts of misconduct involving two consolidated matters. Respondent 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 (State Bar) 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**

Respondent was admitted to practice law in this state on January 12, 1971, and has been a member since then.

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

On March 7, 2017, the State Bar properly filed and served an 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 not returned to the State Bar by the U.S. Postal Service as undeliverable.<sup>3</sup>

In addition, Respondent had actual notice of this proceeding. On March 30, 2017, the State Bar emailed a courtesy copy of the NDC to Respondent at his official membership records email address. In this email, the State Bar informed Respondent that his response to the NDC was due by April 3, 2017, and that the initial status conference was scheduled for April 10, 2017. On March 30, 2017, Respondent sent an email reply to the State Bar. In his reply, Respondent stated, "Please check my status. I sent in a resignation in February. Please inform me if it was not received."

On April 3, 2017, the State Bar replied to Respondent's email and informed him that no resignation had been filed and that his response to the NDC remained due. On April 10, 2017, Respondent sent a reply email stating, "Thank you. I have been very ill. I am sending another

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<sup>3</sup> The State Bar did not receive a signed return receipt for the NDC.

resignation tomorrow. I will send you a duplicate copy. In any case, I am too ill to participate and too poor to retain counsel.”

Respondent did not appear at the initial status conference and failed to file a response to the NDC. On April 21, 2017, the State Bar filed and properly served a motion for entry of Respondent’s default. The motion included a supporting declaration of reasonable diligence by the 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 May 10, 2017. The order entering 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, and he has remained inactively enrolled since that time.

Respondent also 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].) On September 7, 2017, the State Bar filed the petition for disbarment. The State Bar reported in the petition that: (1) Respondent had communicated by email with the State Bar since the entry of his default;<sup>4</sup> (2) Respondent has no other disciplinary matters pending; and (3) Respondent has a prior record of discipline.<sup>5</sup> 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 3, 2017.

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<sup>4</sup> In this email exchange, Respondent informed the State Bar that he again sent in his resignation. The State Bar advised Respondent that submitting a resignation would not stop the present prosecution.

<sup>5</sup> The State Bar did not indicate whether the Client Security Fund has made any payments resulting from Respondent’s conduct. (See Rules Proc. of State Bar, rule 5.85(A)(4).)

Respondent has been disciplined on one prior occasion. Pursuant to a Supreme Court order filed on July 29, 2016, in case No. S234640 (State Bar Court case Nos. 15-O-10504 (15-O-10736)), Respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for two years, including a minimum period of actual suspension of sixty days and until payment of various court-ordered sanctions. In that matter, Respondent stipulated to fifteen counts of misconduct in two matters, including failing to perform legal services with competence, failing to account, failing to obey court orders (eight counts), and failing to report sanctions (five counts).

**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(F)(1)(d).)

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Count One – Respondent willfully violated Business and Professions Code section 6068, subdivision (k) (failure to comply with conditions of probation), by failing to timely: (1) contact the Office of Probation to schedule a meeting; (2) meet with the Office of Probation; and (3) submit two quarterly reports.

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Count Two – Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned, or suspended attorneys) by not filing a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), thereby failing to timely comply with

the provisions of a Supreme Court order requiring compliance with California Rules of Court, rule 9.20.

**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) Respondent had actual notice 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 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.

**RECOMMENDATIONS**

**Disbarment**

The court recommends that respondent Joseph Dulles Allen, State Bar number 48922, 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 Joseph Dulles Allen, State Bar number 48922, 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 13, 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 October 13, 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:

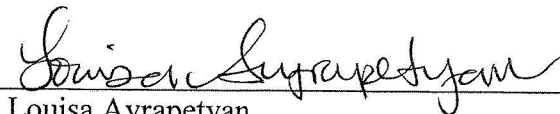
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JOSEPH DULLES ALLEN  
JOSEPH D. ALLEN, ATTORNEY AT LAW  
PO BOX 91260  
SANTA BARBARA, CA 93190

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

CAITLIN M. ELEN-MORIN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 13, 2017.



Louisa Ayrapetyan  
Case Administrator  
State Bar Court