

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 08-O-14848 (09-O-13359;
)	09-O-18321); 10-O-04746
MICHAEL BRUCE BAKER,)	(10-O-04889; 10-O-04890;
)	10-O-09291) (Cons.)
Member No. 53099,)	
)	DECISION AND ORDER OF
A Member of the State Bar.)	INVOLUNTARY INACTIVE
)	ENROLLMENT
)	

Respondent Michael Bruce Baker was charged in two notices of disciplinary charges with a total of sixteen counts of misconduct involving eight client matters and one non-client matter. He failed to appear at the trial of this case and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under the Rules of Procedure of the State Bar, rule 5.85.¹

Rule 5.85 provides the procedure to follow when an attorney fails to appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated

¹ Unless otherwise indicated, all references to rules are to this source.

within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

In the instant case, the court concludes that all of 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 December 14, 1972, and has been a member of the State Bar since then.

Procedural Requirements Have Been Satisfied

The State Bar filed and properly served two separate notices of disciplinary charges in this case. On May 16, 2011, respondent filed his response to both.

By order filed April 28, 2011, the trial was set to start on August 4, 2011. The order setting the trial date was served on respondent's counsel by first-class mail, postage paid. (Rule 5.81(A).)

On June 30, 2011, the State Bar deputy trial counsel assigned to this matter spoke with respondent by telephone. During the conversation, respondent admitted that he was aware of the August trial dates. The State Bar appeared for trial on August 4, 2011, but respondent did not.

Finding that all of the requirements of rule 5.81(A) were satisfied, the court entered respondent's default by order filed August 4, 2011. The order notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. The order also placed respondent on involuntary inactive status under Business and Professions Code

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(E)(2).)

section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].) On January 24, 2012, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) respondent has not contacted the State Bar since his default was entered; (2) in addition to certain matters which were abated by the court, there are other matters abated by the State Bar which have not been filed; (3) respondent has four records of prior discipline; and (4) the Client Security Fund has not yet considered the multiple claims of victims pending the final order in these matters. 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 February 23, 2012.

Respondent has been disciplined on four prior occasions. In December 1981, he was privately reproved as a result of his conviction of violating Penal Code section 314, subdivision 1 (indecent exposure), which was found to involve other misconduct warranting discipline. Respondent participated in this prior disciplinary matter.

In January 1985, respondent was privately reproved as a result of his conviction for violating Penal Code section 314, subdivision 1 (indecent exposure) and three earlier convictions for violating Penal Code section 415 (disturbing the peace), which were found to involve misconduct warranting discipline. Respondent participated in this disciplinary matter.

On March 22, 1989, respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for six years, on conditions including that he be suspended during the first six months of his probation period. Discipline was imposed for two separate convictions of violating Penal Code section 314, subdivision 1 (indecent exposure) with

prior conviction(s) of the same offense, which were found to involve other misconduct warranting discipline. Respondent was also found to have failed to comply with conditions attached to a private reproof and to have violated his oath and duties as an attorney. Respondent participated in this prior disciplinary matter.

On February 16, 2000, respondent was suspended for five years, the execution of which was stayed, and he was placed on probation for six years on conditions including that he be suspended for three years and until he provides proof of his rehabilitation, fitness to practice and learning and ability in the general law. Discipline was imposed as a result of respondent's conviction of Penal Code section 314, subdivision 1 (indecent exposure)³ with priors. Respondent's conduct was found to involve other misconduct warranting discipline. Respondent entered into a stipulation as to facts, conclusions of law and disposition in this disciplinary matter.

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 here support the conclusion that respondent is culpable of violating a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85, subd. (E)(1)(d).)

1. Case Number 08-O-14848 (NSF Check Matter)

Count One – respondent willfully violated Business and Professions Code section⁴ 6106 (moral turpitude) by issuing two client trust account checks when he knew, or in the absence of

³ This was respondent's fifth conviction of violating Penal Code section 314, subdivision 1 (indecent exposure).

⁴ All further references to section(s) refer to provisions of the Business and Professions Code.

gross negligence, would have known, that the balance in his client trust account was substantially less than the amount of the checks.

2. Case Number 09-O-13359 (Perez Matter)

Count Two – respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (RPC) (failure to maintain client funds in trust account) by failing to maintain \$13,400.67 in his client trust account on behalf of his client.

Count Three – respondent willfully violated rule 4-100(B)(4) of the RPC (promptly pay/deliver client funds) by failing to pay out to his client and her lienholders the \$10,900.67 owed to his client and her lienholders from the client’s settlement, as requested by the client.

Count Four – respondent willfully violated section 6106 by misappropriating settlement funds due to his client and her lienholders in the amount of \$10,900.67.

3. Case Number 09-O-18321 (Smith/McKenny/Noyola Matter)

Count Five - respondent willfully violated rule 4-100(A) of the RPC by failing to maintain a total of \$6,231 in his client trust account on behalf of two clients.

Count Six – respondent willfully violated section 6106 by misappropriating settlement funds due to his client and his client’s lienholders in the amount of \$5,360.

Count Seven - respondent willfully violated section 6106 by misappropriating settlement funds due to his client and his client’s lienholders in the amount of \$871.

Count Eight – respondent willfully violated rule 4-100(B)(4) of the RPC by failing to pay out to his client and his client’s lienholders, as requested by the client, any portion of the \$3,685 owed to the client and the client’s lienholders from the client’s settlement.

4. Case Number 10-O-04746 (Salisbury Matter)

Count One – respondent willfully violated rule 4-100(A) of the RPC by failing to maintain \$3,919.50 of client funds in his client trust account on behalf of his client.

Count Two – respondent willfully violated section 6106 by misappropriating \$3,919.50 of his client’s settlement proceeds.

5. Case Number 10-O-04889 (Avery Matter)

Count Three – respondent willfully violated rule 4-100(A) of the RPC by failing to maintain \$4,355 in trust on behalf of his client from the client’s settlement proceeds.

Count Four – respondent willfully violated section 6106 by misappropriating \$4,355 of his client’s settlement proceeds.

6. Case Number 10-O-04890 (Fenceroy Matter)

Count Five – respondent willfully violated rule 4-100(A) of the RPC by failing to maintain \$10,050 in trust on behalf of his client from his client’s settlement proceeds.

Count Six – respondent willfully violated section 6106 by misappropriating \$10,050 of his client’s settlement proceeds.

7. Case Number 10-O-09291 (Young Matter)

Count Seven – respondent willfully violated rule 4-100(A) of the RPC by failing to maintain \$662.36 in trust on behalf of his client from the client’s property damage check.

Count Eight – respondent willfully violated section 6106 by misappropriating \$662.36 of the client’s property damage check.

Disbarment is Mandated under the Rules of Procedure

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied and respondent’s disbarment must be recommended. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) respondent had actual notice of this proceeding and of the trial date prior to entry of the default;
- (3) the default was properly entered under rule 5.81; 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 appear for the trial of this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court must recommend his disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Michael Bruce Baker be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Restitution

The court also recommends that respondent be ordered to make restitution to the following payees:

- (1) Deyba Perez in the amount of \$10,900.67 plus 10 percent interest per year from November 26, 2008;
- (2) James Smith in the amount of \$5,360 plus 10 percent interest per year from June 30, 2009;
- (3) Anwar McKenny in the amount of \$871 plus 10 percent interest per year from June 30, 2009;
- (4) Isidro Noyola in the amount of \$3,685 plus 10 percent interest per year from July 21, 2009;
- (5) Krystal Salisbury in the amount of \$3,919.50 plus 10 percent interest per year from December 31, 2008;

(6) Anthony Avery in the amount of \$4,355 plus 10 percent interest per year from May 29, 2009;

(7) Debra Fenceroy in the amount of \$10,050 plus 10 percent interest per year from May 29, 2009; and

(8) Leroy Young in the amount of \$662.36 plus 10 percent interest per year from May 29, 2009.

Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, 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 Michael Bruce Baker, State Bar Number 53099, 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. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: May 4, 2012

RICHARD A. PLATEL
Judge of the State Bar Court