

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: <b>09-O-17807-RAH (09-O-18618)</b>
	)	
<b>WYMAN PATRICK BERRYESSA,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 196843,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

Respondent Wyman Patrick Berryessa was charged with several violations of the Business and Professions Code and the Rules of Professional Conduct in connection with two client matters. He did not file a response to the notice of disciplinary charges (NDC), and his default was entered. The Office of the Chief Trial Counsel (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 NDC, and the attorney fails to have the default set aside or vacated within 180 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(E)(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 November 24, 1998, and has been a member since then.

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

On April 5, 2011, the State Bar filed and properly served the NDC on respondent by recorded delivery and by first-class email at his membership records address in Beirut, Lebanon, but the correspondence was returned as undeliverable. On April 5 and 6, 2011, a copy of the NDC was also sent to respondent's email address for State Bar purposes.<sup>3</sup> The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Respondent had actual notice of these proceedings as he communicated by email with the State Bar from April 24 through May 12, 2011. Among other things, he addressed certain issues raised by the NDC. In a July 4, 2011 email to the State Bar, respondent indicated that he had been unable to formally respond to the NDC.

Respondent also participated in a May 23, 2011, status conference, during which he was notified of the dates set for a settlement conference, a pretrial conference and trial. He also was allowed until June 3, 2011, to file a response to the NDC.

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<sup>3</sup> Since February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

Respondent did not file a response to the NDC. On June 9, 2011, the State Bar filed and properly served a motion for entry of respondent's default.<sup>4</sup> The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar 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 July 12, 2011. The order entering the default was served on respondent at his membership records address by recorded delivery and at a Tennessee address by regular mail.<sup>5</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.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On May 17, 2012, the State Bar filed a petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar has not had contact with respondent since the default was entered; (2) there is one other disciplinary investigation matter pending against respondent; (3) respondent has no prior record of discipline; and (4) the Client Security Fund (CSF) has not made any payments resulting from respondent's conduct. 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 June 27, 2012.

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<sup>4</sup> Respondent was aware of the motion. In the July 4, 2011 email to the State Bar noted earlier, he also stated that he was unable to respond to the motion.

<sup>5</sup> The Tennessee address was provided to the court by the State Bar.

## **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, except as otherwise noted and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

### **1. Case Number 09-O-17807 (NSF Checks Matter)**

Count One - respondent violated section 6106 of the Business and Professions Code<sup>6</sup> (moral turpitude) by repeatedly issuing checks drawn upon insufficient funds in his client trust account.

Count Two – respondent violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by not responding to State Bar letters and by not otherwise responding to allegations as requested by the State Bar investigator.

### **2. Case Number 09-O-18618 (Sharp Matter)**

Count Three – respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct (unauthorized practice of law in another jurisdiction) by agreeing to represent and representing Artis Sharp as an attorney in seeking a modification of Sharp's mortgage on property located in Tennessee when respondent was not entitled to practice law in Tennessee.

Count Four – respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct (illegal fee) by entering into an agreement for, charging and collecting \$1,950 in fees for legal services from Sharp when he was not licensed to practice law in Tennessee.

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<sup>6</sup> Unless otherwise indicated, all further references to statutes are to the Business and Professions Code.

Count Five – there is not clear and convincing evidence that respondent willfully violated section 6068, subdivision (j) (not maintaining address with State Bar) as the meaning of “refused unable to forward” is unclear regarding the State Bar’s February 25, 2010 letter to respondent.

**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 the proceedings prior to the entry of his default, as he participated in a status conference and had email exchanges with the State Bar about this proceeding after the NDC was filed. Respondent was also aware that a motion for entry of default had been filed;
- (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 must recommend his disbarment.

**RECOMMENDATION**

**Disbarment**

The court recommends that respondent Wyman Patrick Berryessa 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 Artis Sharp in the amount of \$1,950 plus 10 percent interest per year from July 1, 2009.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

**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 Wyman Patrick Berryessa, State Bar number 196843, 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: September \_\_\_\_, 2012

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RICHARD A. HONN  
Judge of the State Bar Court

