

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No. 10-O-05924-DFM
)	
DAVID VERNON SKINNER,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 123426,)	ENROLLMENT
)	
A Member of the State Bar.)	
_____)	

INTRODUCTION

Respondent David Vernon Skinner (Respondent) was charged with eight counts of misconduct in three client matters. He failed to participate either in person or through counsel 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 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 180 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 the requirements of rule 5.85 have been satisfied and, therefore, recommends that Respondent be disbarred from the practice of law.

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

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, subd. (E)(2).)

FINDINGS AND CONCLUSIONS

Jurisdiction

Respondent was admitted to the practice of law in California on June 10, 1986, and has been a member of the State Bar at all relevant times.

Procedural Requirements Have Been Satisfied

The court finds that all of the procedural requirements set forth in Rule 5.85, subdivisions (E)(1)(a)-(c) have been satisfied.

On April 4, 2011, the State Bar properly served the NDC on Respondent at his membership records address in Rancho Santa Margarita, California, 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.) The NDC was returned by the Post Office bearing a stamp indicating that it was being returned to the sender and was unable to be forwarded.

Prior to filing the NDC, the State Bar had successfully communicated with Respondent at a New York address and telephone number and at a different email address from the one listed in his membership records. In addition to serving him at his membership records address, the State Bar sent a copy of the NDC to Respondent both at the New York address and at the email address. Neither this letter nor the email was returned as undeliverable. The State Bar also telephoned Respondent at the New York telephone number and left a message informing him of this proceeding. Respondent did not respond to these additional efforts to contact him.

Respondent failed to file a response to the NDC. On May 2, 2011, the State Bar filed a motion for entry of his default. 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 again that his failure to participate in the proceeding would result in a

disbarment recommendation. After Respondent did not file a response to the motion, his default was entered on May 18, 2011. He was also placed on involuntary inactive status and has remained inactive since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83, subd. (C)(1) [attorney has 180 days to file motion to set aside default].) On November 16, 2011, the State Bar filed the petition for disbarment. As required by rule 5.85, subdivision (A), the State Bar reported in the petition that: (1) it has had no contact with Respondent since the default was entered; (2) no other disciplinary charges are pending against Respondent but there are four other investigation matters pending; (3) Respondent does not have a record of prior discipline; and (4) the Client Security Fund has not paid out any claims as a result of Respondent's misconduct. Respondent has not responded to the petition or moved to set aside or vacate the default.

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 a finding that Respondent violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85, subd. (E)(1)(d).)

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Count One – Respondent violated Business and Profession Code section 6106 (moral turpitude) by misappropriating \$7,650 in settlement funds belonging to his client, Commercial Services Group.

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Count Two – Respondent violated rule 4-100(A) of the Rules of Professional Conduct (trust account violation) by failing to deposit into his client trust account \$5,100 of advanced costs he collected from his client, Tuff Shed, Inc.

Count Three – Respondent violated Business and Profession Code³ section 6106 by misappropriating the \$5,100 in advanced costs he had collected from Tuff Shed, Inc.

Count Four – Respondent violated rule 4-100(B)(1) of the Rules of Professional Conduct (failure to notify client of receipt of client funds) by failing to notify Tuff Shed, Inc., that he had received \$21,700 in settlement funds belonging to the client.

Count Five – Respondent violated section 6106 by misappropriating the \$21,700 in settlement funds belonging to Tuff Shed, Inc.

Count Six – Respondent violated section 6068, subdivision (i) (failure to cooperate in investigation) by failing to respond to the State Bar’s investigation letters regarding the Tuff Shed, Inc., matter.

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Count Seven – Respondent violated rule 4-100(B)(4) of the Rules of Professional Conduct (failure to pay client funds promptly) by failing to return \$500 in advanced costs to his client, US Tech Solutions.

Count Eight – Respondent violated section 6068, subdivision (i), by failing to respond to the State Bar’s investigation letters regarding the US Tech Solutions matter.

RECOMMENDATION

Disbarment

Having found that all of the requirements of Rule 5.85, subdivision (E) are satisfied, the court recommends that respondent David Vernon Skinner 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 further recommends that Respondent be required to make restitution to

³ Unless otherwise indicated, all further references to sections are to the Business and Professions Code.

(1) Commercial Services Group in the amount of \$7,650, plus interest of 10 percent per year from October 19, 2009; (2) Tuff Shed, Inc., in the amount \$26,800, plus interest of 10 percent per year from October 12, 2009; and (3) US Tech Solutions in the amount of \$500, plus interest of 10 percent per year from May 11, 2010 (or reimburse the Client Security Fund to the extent of any payment from the Fund to these former clients, in accordance with Business and Professions Code section 6140.5).

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 section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with section 6007, subdivision (c)(4), the court orders that **David Vernon Skinner**, Member No. 123426, 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, subd. (D).)

Dated: January _____, 2012

DONALD F. MILES
Judge of the State Bar Court