

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: <b>10-O-08328-PEM</b>
	)	
<b>ROBERT BRUCE SERIAN,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 96170,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

Respondent Robert Bruce Serian (respondent) was charged with failing to maintain client funds in a trust account, misappropriation of client funds, issuing client trust account checks against insufficient funds, failing to obey a court order, failing to update his membership address, and failing to cooperate in a State Bar investigation. 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 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),

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

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>

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 December 16, 1980, and has been a member since then.

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

On July 6 and 8, 2011, the State Bar properly served and filed, respectively, the Second Amended NDC on respondent by certified mail, return receipt requested, at his membership records address. The United States Postal Service returned the Second Amended NDC as unclaimed. The Second Amended NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Thereafter, State Bar attorney Kristin Ritsema (Ritsema) wrote a letter to respondent which was sent by first-class mail, postage prepaid, to respondent at his membership records address. Ritsema also attempted to reach respondent by telephone on two different dates at his membership records telephone number and sent an email to respondent at the email address listed on his membership records.<sup>3</sup> Ritsema also called directory assistance for the area which included respondent's official membership records address and an on-line internet search was

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<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).)

<sup>3</sup> Effective 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).)

conducted in an attempt to obtain alternate contact information for respondent. The report from the on-line search indicated a possible residential address for respondent in Valencia and three possible current telephone numbers. Ritsema called those three telephone numbers but was unable to contact respondent.

Respondent failed to file a response to the NDC. On August 26 and 29, 2011, the State Bar served on respondent's membership records address by certified mail, return receipt requested,<sup>4</sup> and filed, respectively, a motion for entry of respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar supervising 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 September 14, 2011. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested.<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 also 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 July 30, 2012,<sup>6</sup> the State Bar filed

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<sup>4</sup> The motion was also served on respondent by first-class mail at the Valencia address.

<sup>5</sup> The order was also served on respondent by first-class mail at the Valencia address.

<sup>6</sup> The State Bar filed an earlier petition for disbarment, but due to concerns regarding service of that petition, the court in July 2012, ordered the State Bar to re-serve the petition for disbarment on respondent.

the petition for disbarment.<sup>7</sup> As required by rule 5.85(A), the State Bar reported in the petition that (1) the State Bar has had contact with respondent since his default was entered;<sup>8</sup> (2) there are six disciplinary investigation matters 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; however, there is a CSF claim currently pending. 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 August 30, 2012.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of respondent's default, the factual allegations in the Second Amended 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 Second Amended 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(E)(1)(d).)

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<sup>7</sup> The petition was served on respondent by both first-class mail and by certified mail, return receipt requested, at his membership records address.

<sup>8</sup> On March 5, 2012, Ritsema received a letter dated February 27, 2012, from respondent in which he purported to resign his membership in the State Bar of California. The letter was written on letterhead that indicated that respondent's address is the Valencia address discovered in the on-line search. As respondent's letter did not include the proper resignation language, Ritsema wrote a letter to respondent at his membership records address, which was sent via first-class mail, enclosing a resignation package containing the applicable rules and forms required if respondent wanted to tender his resignation with charges pending. On March 22, 2012, Ritsema received from respondent a letter enclosing his signed resignation with charges pending form. Further efforts by Ritsema to contact respondent were unsuccessful. Ritsema transmitted respondent's resignation with charges pending to the State Bar Court. The court takes judicial notice that on October 31, 2012, the Supreme Court entered an order declining to accept respondent's resignation with charges pending.

**Case Number 10-O-08328 (Weltman Matter)**

Count One – respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (preserving identity of funds and property of a client) by failing to maintain \$13,790 in advanced costs in his client trust account on behalf of his client.

Count Two – respondent willfully violated Business and Professions Code section 6106 (commission of act of moral turpitude, dishonesty or corruption) by misappropriating \$13,590 of funds belonging to his client.

Count Three – respondent willfully violated Business and Professions Code section 6106 by issuing 61 checks from his client trust account when he was grossly negligent in not knowing that there were insufficient funds in the client trust account to pay the checks.<sup>9</sup>

Count Four – respondent willfully violated Business and Professions Code section 6103 (violation of court order) by failing to appear on two occasions at order to show cause hearings and failing to pay \$300 in sanctions and \$240 in outstanding fees to the Madera County Superior Court as ordered by the court.

Count Five – respondent willfully violated Business and Professions Code section 6068, subdivision (j) (comply with requirements of Business and Professions Code section 6002.1- failure to update membership records address) by failing to notify the State Bar of his new office address or address to be used for State Bar purposes until more than 30 days after his address change, thereby failing to comply with Business and Professions Code section 6002.1.

Count Six – respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to respond to letters from a State Bar investigator or otherwise cooperate or participate in the State Bar’s investigation of this matter.

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<sup>9</sup> There is no clear and convincing evidence which, if any, checks remain unpaid as of the date of the filing of this decision and order.

## **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) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the State Bar properly filed and served the Second Amended NDC on respondent by certified mail, return receipt requested, at his membership records address; the State Bar attempted to contact respondent by letter, telephone, and email; the State Bar contacted directory assistance for the area which included respondent's membership records address and conducted an on-line internet search to obtain alternate contact information;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the Second Amended 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 must recommend his disbarment.

## **RECOMMENDATION**

### **Disbarment**

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

### **Restitution/Sanctions & Fees**

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

Weltman, Weinberg & Reis Co., L.P.A., in the amount of \$13,590 plus 10 percent interest per year from July 22, 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).

In addition, respondent must pay to the Madera County Superior Court the \$300 in sanctions and \$240 in outstanding fees as ordered in *Discover Bank v. Christopher Lovelace, et al.*, case No. SCV007293.

**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 Robert Bruce Serian, State Bar number 96170, 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: November \_\_\_\_\_, 2012

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PAT McELROY  
Judge of the State Bar Court

