

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of ) Case Nos.: **10-O-10876 (10-O-10877;**  
) **11-O-10757; 11-O-11924;**  
**PETER JASON CABBINESS,** ) **11-O-12454; 11-O-15142) - LMA**  
)  
**Member No. 185376,** ) **DECISION AND ORDER OF**  
) **INVOLUNTARY INACTIVE**  
A Member of the State Bar. ) **ENROLLMENT**  
)  
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Respondent Peter Jason Cabbiness (respondent) was charged with 20 counts of violations of the Rules of Professional Conduct and the Business and Professions Code.<sup>1</sup> 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>2</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 further references to section(s) refer to provisions of the Business and Professions Code.

<sup>2</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>3</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 9, 1996, and has been a member since then.

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

Respondent had actual notice of this disciplinary proceeding. In late July 2011, respondent contacted the assigned State Bar investigator by telephone and, among other things, expressed his desire to participate in the State Bar matters; gave a telephone number at which he could be reached; was given the name of the assigned deputy trial counsel (DTC); and stated that he is unable to receive mail at his membership records address but could receive mail at a specified Fresno address. Respondent also contacted the assigned DTC by email, and on August 12, 2011, respondent and the assigned DTC discussed the pending matters against him by telephone.

On August 29, 2011, the State Bar filed and properly served the NDC on respondent by regular and certified mail, return receipt requested, at his membership records address and by regular mail to the address in Fresno. The NDC sent by certified mail was returned to the State Bar by the U.S. Postal Service because it was undeliverable as addressed and unable to be forwarded. The NDC sent to the Fresno address was not returned by the U.S. Postal Service.

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<sup>3</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).)

The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Respondent failed to file a response to the NDC. On September 29, 2011, the State Bar filed and properly served 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 DTC 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 October 17, 2011. The order entering the 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 180 days to file motion to set aside default].) On April 18, 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) the State Bar has not had any contact with respondent since his default was entered; (2) there are 12 additional pending disciplinary matters involving respondent; (3) respondent has a prior record of discipline; and (4) the Client Security Fund has seven pending matters 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 May 15, 2012.

Respondent has a prior record of discipline.<sup>4</sup> Pursuant to a Supreme Court order filed on December 10, 2010, respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for three years subject to conditions including that he be suspended from the practice of law for a minimum of the first six months of probation and until he makes specified restitution. Respondent was disciplined for failing to perform competently, failing to keep a client reasonably informed of significant developments in the client's legal matter, failing to refund promptly unearned fees/costs, failing to release/return promptly all client papers and property, failing to respond to reasonable status inquiries, failing to support the laws of the State of California by holding himself out as entitled to practice law and actually practicing law when he was not an active member, and entering into a business transaction with his client without complying with the requirements of rule 3-300 of the Rules of Professional Conduct.

### **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, subd. (E)(1)(d).)

#### **1. Case Number 10-O-10876 (UPL Matter)**

Count One(A) – the court does not find respondent culpable of willfully violating section 6068, subdivision (a) (attorney's duty to support Constitution and laws of United States and

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<sup>4</sup> The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence and directs the Clerk to include copies in the record of this case.

California) as there is no clear and convincing evidence that respondent held himself out as entitled to practice law when he was not entitled to do so in violation of sections 6125 and 6126.

Count One(B) – respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by not providing a written response to the investigator’s letters or otherwise participating in the disciplinary investigation.

**2. Case Number 10-O-10877 (Sanctions Matter)**

Count Two(A) – respondent willfully violated section 6103 (violation of court order) by failing to pay court ordered sanctions in three separate matters totaling \$1,250 to the United States District Court, Eastern District of California.

Count Two(B) – respondent willfully violated section 6068, subdivision (i) by not providing a written response to the investigator’s letters or otherwise participating in the disciplinary investigation.

**3. Case Number 11-O-10757 (Khan Matter)**

Count Three(A) – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to respond to discovery, failing to serve any discovery requests on any of the defendants on behalf of his client, and by failing to inform opposing counsel and the court of his ineligibility to practice law.

Count Three(B) – respondent willfully violated section 6068, subdivision (m) (failing to inform of significant developments) by not: (1) informing his client that he had dismissed her complaint against two defendants; (2) informing his client of opposing counsel’s discovery requests; and (3) promptly informing his client of his ineligibility to practice law.

Count Three(C) – respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by not giving his client notice that he was terminating his employment with the client.

Count Three(D) – the court does not find respondent culpable of willfully violating section 6068, subdivision (a) as there is no clear and convincing evidence that respondent held himself out as entitled to practice law when he was not entitled to do so in violation of sections 6125 and 6126.

Count Three(E) – respondent willfully violated section 6068, subdivision (i) by not providing a written response to the investigator’s letters or otherwise participating in the disciplinary investigation.

**4. Case Number 11-O-11924 (Carrillo Matter)**

Count Four(A) – the court does not find respondent culpable of willfully violating rule 3-110(A) of the Rules of Professional Conduct as there is no clear and convincing evidence that respondent recklessly, repeatedly or intentionally failed to perform legal service with competence.

Count Four(B) – respondent willfully violated section 6068, subdivision (m) by failing to notify his client that he was ineligible to practice law during periods when he remained the attorney of record for the client in a pending matter.

Count Four(C) – the court does not find respondent culpable of willfully violating rule 3-700(A)(2) of the Rules of Professional Conduct, as there is no clear and convincing evidence that respondent withdrew from employment. Rather, from September 1-14, 2010, and as of October 25, 2010, respondent was not eligible to practice law.

Count Four(D) – respondent willfully violated section 6068, subdivision (a) by failing to notify his client and the superior court of his inactive status, thereby holding himself out to the court and his client as entitled to practice law when he was not an active member of the State Bar in violation of sections 6125 and 6126.

Count Four(E) – respondent willfully violated section 6068, subdivision (i) by not providing a written response to the investigator’s letter or otherwise participating in the disciplinary investigation.

**5. Case Number 11-O-12454 (Bains Matter)**

Count Five(A) – the court does not find respondent culpable of willfully violating rule 3-700(A)(2) of the Rules of Professional Conduct, as there is no clear and convincing evidence that respondent withdrew from employment. Rather, as of October 25, 2010, respondent was not eligible to practice law.

Count Five(B) – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to promptly refund unearned fees) by failing to promptly return any portion of the \$2,200 paid in advance that was not earned.

Count Five(C) – respondent willfully violated section 6068, subdivision (m) by not informing his client of his pending suspension from the practice of law.

Count Five(D) – respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct (illegal fee) by collecting a \$200 advanced attorney fee from his client when respondent was not an active member of the State Bar.

Count Five(E) – respondent willfully violated section 6068, subdivision (i) by not providing a written response to the investigator’s letter or otherwise participating in the disciplinary investigation.

**6. Case Number 11-O-15142 (Probation Conditions Matter)**

Count Six – respondent willfully violated section 6068, subdivision (k) (duty to comply with probation conditions) by failing to comply with specified conditions (quarterly reporting and fee arbitration) attached to a disciplinary probation.

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## **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 disciplinary proceeding, as respondent contacted the assigned State Bar investigator and DTC; respondent and the DTC discussed the pending matters against him; and the State Bar filed and properly served the NDC on respondent at his membership records address and an alternate address;

(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 Peter Jason Cabbiness 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:<sup>5</sup>

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<sup>5</sup> There is no clear and convincing evidence that any further money is owed to other individuals or entities.



(1) United States District Court, Eastern District of California, in the amount of \$1,250;<sup>6</sup>  
and

(2) Talwinder Bains in the amount of \$2,200 plus 10 percent interest per year from  
September 21, 2010.

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 Peter Jason Cabbiness, State Bar number 185376, be involuntarily enrolled as

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<sup>6</sup> This figure represents the total sanctions ordered against respondent in three separate  
matters (Count Two(A)).

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: August \_\_\_\_\_, 2012

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LUCY ARMENDARIZ  
Judge of the State Bar Court