

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 11-O-11689-PEM
)	
DRAGO CHARLES BARIC,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 105383,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Drago Charles Baric (respondent) was charged with (1) failing to obey a court order; (2) improper withdrawal from employment; (3) failing to respond to client inquiries; (4) failing to release a file; (5) failing to refund unearned fees; and (6) 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.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),

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¹ 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.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 December 3, 1982, and has been a member since then.

Procedural Requirements Have Been Satisfied

On December 29, 2011, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at his membership records address and by regular first-class mail to an address on Barbara Street in San Pedro, California (Barbara Street address) and to a post office box in San Pedro, California (P.O. Box address). The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC addressed to respondent's membership records address and the NDC addressed to the P.O. Box address were returned by the United States Postal Service (USPS). The NDC addressed to the Barbara Street address was not returned by the USPS.

Respondent had actual notice of this disciplinary proceeding, as he received Deputy Trial Counsel Agustin Hernandez's March 9, 2012 telephone message and telephoned DTC Hernandez on March 12, 2012. DTC Hernandez informed respondent that he had filed the NDC with the court and that respondent's response was overdue. Respondent asked DTC Hernandez

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).)

to send him a copy of the NDC to an email address³ and he would file a response forthwith. Respondent confirmed that his membership records address was still valid and that his home address was the Barbara Street address.⁴ That same day, DTC Hernandez sent an email to respondent, attaching the NDC, and advising him that if he did not file a response to the NDC by March 16, 2012, DTC Hernandez would file a motion for entry of default.⁵

Nevertheless, respondent failed to file a response to the NDC. On March 26, 2012, the State Bar properly served on respondent by certified mail, return receipt requested, a motion for entry of respondent's default at both his membership records address and the Barbara Street address. The motion was filed with the court on March 27, 2012, and 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.) and setting forth that respondent had actual notice of this proceeding. 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 April 16, 2012. 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

³ 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).) However, it appears that this email address may not have been one of the email addresses on file with the State Bar's membership records.

⁴ Respondent, however, informed DTC Hernandez that the street name was actually South Barbara, but that he still received mail whether or not the word "South" was included in the address. (See declaration of DTC Hernandez attached to the State Bar's motion for the entry of respondent's default.)

⁵ On March 12, 2012, DTC Hernandez also sent a letter containing the same message as in the email, as well as the NDC, to respondent by regular first-class mail to his membership records address and to the Barbara Street and South Barbara Street addresses. The NDC sent to respondent's membership records address was returned by the USPS. The NDCs sent to the Barbara and South Barbara addresses were not returned by the USPS.

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 December 26, 2012, the State Bar filed the petition for disbarment.⁶ As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) there are five investigations pending against respondent; (3) respondent has a record of two prior impositions of discipline; and (4) the Client Security Fund has made payment on one reimbursement application filed against respondent. 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 February 15, 2013.

Respondent has a record of two prior impositions of discipline.⁷ Pursuant to a Supreme Court order filed on June 15, 2011, respondent was suspended for two years, the execution of which was stayed, and respondent was placed on probation for three years subject to conditions, including that he be suspended for the first year of probation. Respondent was found culpable in this matter of willfully violating rules 3-700(D)(2) (two counts), 3-110(A) (two counts), 4-100(A), 4-100(B)(1), and 4-100(B)(3) of the Rules of Professional Conduct and Business and Professions Code section 6068, subdivisions (m) (three counts) and (i) (five counts). Respondent participated sporadically in this prior disciplinary matter.

Pursuant to a Supreme Court order filed on November 30, 2011, respondent was suspended for three years, the execution of which was stayed, subject to conditions including that

⁶ The petition was served on respondent on December 21, 2012, by certified mail, return receipt requested, at his membership records address.

⁷ 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.

he be suspended for a minimum of 18 months and that he remain suspended until he makes and furnishes proof of specified restitution and the court grants a motion to terminate his suspension. Respondent initially participated in this disciplinary matter, but he ultimately failed to appear at trial and his default was entered. The court found that respondent failed to render appropriate accounts, failed to refund unearned fees, and deposited, commingled and misused funds belonging to him in a client trust account.

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

Case Number 11-O-11689 (Sanchez Matter)

Count One – respondent willfully violated Business and Professions Code section 6103 (violation of court order) by failing to prepare and submit the judgment in his client's child custody matter to the court for signature and filing as ordered by the court.

Count Two – respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by failing to return a signed substitution of attorney to his client and by failing to inform his client of his intent to withdraw from employment, thereby failing, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client's rights.

Count Three – respondent willfully violated Business and Professions Code section 6068, subdivision (m) (duty to communicate) by failing to return his client's telephone messages inquiring about the status of the judgment in the client's child custody matter.

Count Four – respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to return client papers/property) by not releasing to his client, upon his client’s request, the client’s file upon termination of employment.

Count Five – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to promptly refund unearned fees) by failing to refund to his client any portion of the \$700 in advanced fees paid to respondent for preparing the judgment and submitting it to the court for signature and filing.

Count Six – respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by not providing a written response to the State Bar investigator’s June 27, 2011 letter regarding the allegations in the client’s complaint or otherwise cooperating in the investigation of the client’s complaint.

Disbarment is Recommended

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

(1) the NDC was properly served on respondent under rule 5.25;

(2) respondent had actual notice of these proceedings, as he telephoned DTC Hernandez; DTC Hernandez informed respondent that he had filed the NDC with the court and that respondent’s response was overdue; respondent asked DTC Hernandez to send him a copy of the NDC to an email address and he would file a response forthwith; and DTC Hernandez complied with respondent’s request that same day;

(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 recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Drago Charles Baric 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 Martin Sanchez in the amount of \$700 plus 10 percent interest per year from August 31, 2010.⁸ Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

California Rules of Court, 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.

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⁸ The NDC alleges that in or about late August 2010, the client prepared the judgment himself with the assistance of a court facilitator after respondent failed to return the client's telephone messages and failed to prepare the judgment. Accordingly, by late August 2010, respondent should have returned the \$700 in unearned fees to his client.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Drago Charles Baric, State Bar number 105383, 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: May _____, 2013

PAT McELROY
Judge of the State Bar Court