

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No.: **11-O-12497-LMA**
)
RODNEY LYNN DYCHE,) **DECISION AND ORDER OF**
) **INVOLUNTARY INACTIVE**
Member No. 246847,) **ENROLLMENT**
)
A Member of the State Bar.)

In this single-client matter, respondent Rodney Lynn Dyche (respondent) was charged with (1) failing to refund \$7,000 in unearned fees; (2) failing to return a client file; and (3) failing to cooperate in a disciplinary investigation. Respondent failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel of the State Bar of California (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), 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

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(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 December 1, 2006, and has been a member since then.

Procedural Requirements Have Been Satisfied

On September 27, 2011, the State Bar properly filed and served an NDC on respondent by certified mail, return receipt requested, at his membership records address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) On October 4, 2011, a return card was received by the State Bar, signed by Beate Simpson.

In addition, reasonable diligence was also used to notify respondent of this proceeding. On October 31, 2011, the State Bar sent respondent an email advising that he needed to file a response to the NDC and reminding him that there was an initial status conference scheduled that same day. The State Bar then called respondent's parents and obtained a phone number for him.³ The State Bar proceeded to call that phone number and left a voicemail message advising respondent to file a response to the NDC and reminding him that there was an initial status conference scheduled that same day. Despite these efforts, respondent did not appear for the initial telephonic status conference.

On October 31, 2011, the State Bar mailed a courtesy copy of the NDC by regular first-class mail to respondent at his membership records address and at a possible alternative address

³ Respondent's membership records address did not contain a telephone number.

obtained from lexis.com. These mailings were not subsequently returned by the U.S. Postal Service.

On November 1, 2011, the State Bar received an email from respondent. He stated that he had attempted to return the State Bar's call, but there was no answer. Respondent confirmed that the telephone number obtained from respondent's parents was his correct telephone number and stated that he would attempt to contact the State Bar again. That same day, the State Bar sent respondent a return email advising him to file his response by November 8, 2011, or the State Bar would file a motion for entry of default.

Respondent failed to file a response to the NDC. On November 10, 2011, the State Bar left a voicemail message for respondent advising that a motion for entry of his default would be filed.

On November 15, 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 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 December 1, 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 August 28, 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) it has had no contact with respondent since the default was entered; (2) respondent has no other disciplinary matters pending; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made 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 September 25, 2012.

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-12497 (The Truckee Fire Protection District Matter)

Count One – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees) by failing to refund \$7,000 in advanced unearned legal fees.

Count Two – respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failing to release file) by failing to promptly release his client's file upon termination of employment and at the request of the client.

Count Three – respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a disciplinary investigation) by failing to provide a written response to the allegations in a disciplinary investigation or otherwise cooperate in the investigation of this matter after being contacted by the State Bar.

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 was properly served with a copy of the NDC, communicated with the State Bar via email, and was given repeated telephonic and email reminders to file his response to the NDC;

(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.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Rodney Lynn Dyche 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 Truckee Fire Protection District in the amount of \$7,000 plus 10 percent interest per year from November 17, 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).

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.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Rodney Lynn Dyche, State Bar number 246847, 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: December _____, 2012

LUCY ARMENDARIZ
Judge of the State Bar Court